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**INDUSTRIAL RELATIONS  
AND  
LABOUR LEGISLATION**



## PREFACE

The pattern of both labour legislation and industrial relations in India has its parental linkage to the experiences of Great Britain. An understanding, therefore, of the Indian scene in these respects, as in many other respects, is facilitated if a reference is simultaneously made to the British pattern. The book intends to serve this purpose for students and teachers of labour legislation and industrial relations and also the practitioners.

Starting with historical perspective of the origin of trade unions and industrial relations and the factors conditioning their growth, the book seeks to convey to the reader an idea of the present pattern of industrial relations and labour legislation in Great Britain and India. Wherever possible and necessary, references have also been made to the American experience. The book represents an attempt at a comparative study.

The first part of the book discusses the conditions under which the trade unions originated first in Great Britain and then elsewhere and deals with the factors which retard or accelerate the pace of their growth and determine their policies and programmes under different situations. This part also provides the history of the British and Indian trade union movements and examines the problems of compulsory unionism, structure and government of trade unions, their finances and the issues of multiplicity and leadership. The industrial relations' scene in both Great Britain and India has been discussed and the relative roles of different mechanisms and institutions in the settlement of industrial disputes and various issues in labour-management cooperation have been analysed.

The second part of the book provides the historical background and development of different labour laws, particularly laws in respect of factories, wages, trade unions, industrial relations, social security and labour welfare. The Indian labour laws have been analysed and their parentage traced to their British counterparts. This section also provides an analytical study of the role of the I. L. O. and its impact on the Indian labour legislation.

Though intended primarily as a textbook, many of the chapters are based on detailed analyses of the historical factors and current data. The chapters dealing with structure and government of trade unions and degree of unionisation may claim to provide some original insights based on research findings.

The authors take this opportunity of expressing their thanks to the National Book Trust a subsidy from whom has enabled the book to be available at a moderate price. Their thanks are also due to the numerous friends and colleagues in the Department of Labour and Social Welfare, Patna University whose valuable suggestions have gone to enrich the contents of the book. Errors, printing or other, if any, are regretted.

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## CONTENTS

<i>Preface</i>	v
<i>List of Tables</i>	xiii

### PART ONE : INDUSTRIAL RELATIONS

1. Trade Unionism	3
<u>Definition</u> 3; <u>Origin</u> 4; <u>Emergence of Trade Unionism</u> 7; <u>Legal and other Handicaps of Early Trade Unions</u> 9; <u>Objectives of Trade Unions</u> 11; <u>Methods of Trade Unions</u> 15; <u>Trade Union Activities</u> 26; <u>Determinants of the Rate of Trade Union Growth</u> 27.	
2. <u>Structure and Government of Trade Unions</u>	37
Bases of Organisation 37; Craft vs. Industrial Unions 39; Trade Union Federations 44; Problems of Government and Administration 45; Compulsory Unionism 51.	
3. Trade Union Movement in Great Britain	59
Early Years 59; The Period 1830-1849 61; The Period 1850-1879 63; The Period 1880-1899 67; Trade Unions During the Early 20th Century 69; The First World War Period 71; The Inter-war Period 72; The Second World War Period 76; The Present Position 77; The Trades Union Congress 80; Problems of British Trade Unions Today 86.	
4. Trade Union Movement in India (up to 1949) (1)	88
Early Years 88; The First World War Period 90; The Period 1920-1929 91; The Period 1930-1939 98; The Period 1940-1949 105.	
5. Trade Union Movement in India (1950 Onwards) (2)	125
Conflict and Cooperation 125; Growth of Trade Unions 127; Extent of Unionisation in Different Industries 127; Statewise Pic-	

ture of Trade Unions 131; Increase in the Number of Federations 134; Central Federations 136; International Affiliations 140; Impact of the Growth on Trade Union Policy and Action 140; Industrial Disputes During 1950-1970 141; Statewise Picture of Industrial Disputes 145; Trade Union Cooperation and Consultative Machinery 146.

## 6. Size and Finance of Indian Trade Unions 150

Size 150; Average Membership 150; Frequency Distribution of Trade Union Membership 150; Factors Responsible for the Small Size 153; Consequences of the Small Size of the Trade Unions 154; Finance 155; Income and Expenditure 155; Ways for Improving Finances 159; Check-off System 160.

## 7. Structure and Government of Indian Trade Unions 162

Structure 162; Primary Unions at the Base 164; Industrial Federations 167; National Centres 169; Government 169; Government of the Primary Unions 170; Government of the Industrial Federations 174; Government of the National Centres 175.

## 8. Indian Trade Unions, Political Parties and the Problem of Leadership 178

General Background 178; Domination of Indian Trade Unions by Political Parties 180; Consequences of the Domination 183; Harmful Effects of the Domination 186; The Proper Relationship 189; The Problem of Leadership 190; Who are the Outsiders? 191; Unaffiliated Leadership 191; Adverse Consequences of Outside Leadership 193; Factors Responsible for the Persistence of Outside Leadership 198; Distinction between an Outsider and an Insider 203; NCL on Outside Leadership 204; Futility of the Controversy 205.

## 9. Trade Union Rivalry and Recognition 207

Should Recognition be made Compulsory? 208; Which One of the Unions be Recognised? 210; Statutory Measures 210; Non-statutory Measures 212; Recognition of Majority Union and Problems Involved 214; Criteria to Determine the Representative Character of Unions 215; Levels of Recognition—Plant/Locality/Industry 221; Rights of Recognised vs. Minority Unions 225; Role of Minority Unions 227; Recognition of the Majority Union by the Minority Union 228.

## 10. Industrial Relations—Definition and Main Aspects 229

Definition 229; Evolution of Industrial Relations 230; Two Dominant Aspects of Industrial Relations 232; Nature of Industrial Conflict 233; Industrial Disputes 235; Specific Causes of Industrial Disputes 236; Interests and Rights Disputes 238; Results of Industrial Conflict 239.

# 11. The Problem of Strikes 240

Strike—A Method of Settling Industrial Disputes 240; What is a Strike? 241; Causes of Strikes 241; Forms of Strikes 245; Factors Conditioning the Outcome of Strikes 252; Effects of Strikes 256; An Evaluation of the Right to Strike 263.

# 12. Methods of Settling Industrial Disputes 266

Settlement of Industrial Disputes without State Intervention 267; Settlement of Disputes under the Influence of the State 271; Practice in Different Countries 276; Compulsory Arbitration in India 281; Compulsory Arbitration vs. Collective Bargaining 283; Arguments for Compulsory Arbitration 283; Arguments against Compulsory Arbitration 285; Machinery for the Settlement of Industrial Disputes in Great Britain 289; Machinery for the Settlement and Prevention of Industrial Disputes and Preservation of Industrial Peace in India 294; NCL on Methods of Settling Industrial Disputes 302.

# 13. Labour-Management Cooperation 309

Meaning of Labour-Management Cooperation and its Goals 310; Traditional Forms of Control and Management of Enterprises Under Capitalism 313; Arguments for the Owners' Absolute Right to Manage 313; Arguments against the Owners' Absolute Right to Manage 315; Different Degrees and Forms of Labour-Management Cooperation 316; Labour-Management Cooperation in Great Britain 319; Labour-Management Cooperation in India 329; Joint Management Councils 330; Labour-Management Cooperation Schemes in Particular Industrial Units 341; Handicaps in the Growth of Labour-Management Cooperation Schemes in India 345.

## PART TWO : LABOUR LEGISLATION

# 14. Principles of Social and Labour Legislation 351

Other Institutions Controlling Human Behaviour 351; Declining Influence of Religious Orders and Social Customs 352; Rise of Modern Social Legislation 352; Social Legislation and Labour Legislation 354; Forces Influencing Modern Social and Labour Legislation 355; Forces Influencing the Course of Social and Labour Legislation in India 359; Objectives of Social and Labour Legislation 364; Categories of Labour Legislation 364.

# 15. Factory Legislation in India 367

Factory Legislation in Great Britain 367; Factory Legislation in India 368; The Factories Act, 1881 370; The Indian Factories Act, 1891 370; The Indian Factories Act, 1911 370; The Indian Facto-

ries (Amendment) Act, 1922 371; The Factories Act, 1934 372; The Factories Act, 1948 376; Health 378; Safety 382; Welfare 387; Working Hours of Adult Workers 390; Employment of Young Persons 393; Annual Leave with Wages 396; Other Provisions 398; Leading Trends in Factory Legislation in India 399.

## 16. Legislation Concerning Wages 406

Payment of Wages Legislation 407; Objectives 407; The Payment of Wages Act, 1936 409; Minimum Wage Legislation 423; Objectives of State Regulation of Wages 423; Minimum Wage Legislation in India 425; Minimum Wages Act, 1948 426; An Appraisal 434.

## 17. Trade Union Legislation in Great Britain 437

Early Measures 437; The Combination Acts, 1799 and 1800 438; Trade Unions under Common Law 439; Combination Acts, 1824 and 1825 440; The Molestation Act, 1857 441; The Trade Union Act, 1871 442; The Conspiracy and Protection of Property Act, 1875 446; The Trade Union Act Amendment Act, 1876 446; The Trade Disputes Act, 1906 448; The Trade Union Act, 1913 450; The Trade Union (Amalgamation) Act, 1917 453; The Trade Disputes and Trade Unions Act, 1927 453; The Societies (Miscellaneous Provisions) Act, 1940 456; The Trade Disputes and Trade Unions Act, 1946 456; The Trade Unions (Amalgamation, etc.) Act, 1964 456; The Trade Disputes Act, 1965 457; The Industrial Relations Act, 1971 458; The Trade Unions and Labour Relations Act, 1974 458.

## 18. Trade Union Legislation in India 459

The Background 459; The Indian Trade Unions Act, 1926 461; Registration 461; Rights of Registered Trade Unions 464; Liabilities of Registered Trade Unions 465; An Assessment 471; The Indian Trade Unions (Amendment) Act, 1967 472; The Trade Unions Bill, 1950 473.

## 19. Industrial Disputes and Industrial Relations Legislation in Great Britain 474

Early Measures 475; The Employers and Workmen Act, 1875 475; The Conciliation Act, 1896 476; The Industrial Courts Act, 1919 477; Compulsory Arbitration 480; The Industrial Relations Act, 1971 483; General Principles 484; Code of Practice 485; Rights of Workers 486; Collective Bargaining 494; Other Unfair Industrial Practices 503; Industrial Relations Courts, etc. 504; Restrictions on Legal Proceedings 508; Emergency Procedures 509; Other Provisions 510; Trade Unions and Labour Relations Act, 1974 511.

## 20. Legislation Concerning Settlement of Industrial Disputes in India 512

Legislation Preceding Industrial Disputes Act, 1947 512; The Employers and Workmen (Disputes) Act, 1860 512; The Indian Trade Disputes Act, 1929 512; The Indian Trade Disputes (Amendment) Act, 1932 514; The Trade Disputes (Amendment) Act, 1938 514; Rule 81(A) of the Defence of India Rules 514; The Industrial Disputes Act, 1947 515; Subsequent Amendments 515; The Industrial Disputes Act, 1947 518; Authorities and Reference of Disputes 521; Prohibition of Strikes and Lockouts 536; Lay-off and Retrenchment 538; Other Provisions 543; State Laws 547; The Bombay Industrial Relations Act, 1946 547; The U.P. Industrial Disputes Act, 1947 549; The M.P. Industrial Relations Act, 1960 549; The Industrial Disputes (Amendment) Act, 1976 550.

## 21. Social Security Legislation in India (1) (Evolution and Workmen's Compensation Legislation) 551

Evolution 551; Workmen's Compensation Legislation 559; In Great Britain 559; In India 562; The Workmen's Compensation Act, 1923 564; Some Important Definitions 565; Arising out of and in the Course of Employment 567; Amount of Compensation 571; Distribution of Compensation in Certain Cases 575; Medical Examination 576; Claims before a Commissioner 576; Other Provisions 577.

## 22. Social Security Legislation in India (2) (Maternity Benefit Legislation) 582

The State Maternity Benefit Acts 583; The Central Acts 583; The Central Maternity Benefit Act, 1961 585.

## 23. Social Security Legislation in India (3) (The Employees' State Insurance Act, 1948) 591

Scope 591; Some Important Definitions 593; Contributions 598; Benefits 602; Miscellaneous Provisions Pertaining to Benefits 615; Administration 618.

## 24. Social Security Legislation in India (4) (Provident Fund Legislation) 626

The Coal Mines Provident Fund and Bonus Schemes Act, 1948 628; The Coal Mines Provident Fund Scheme 631; The Coal

Mines Bonus Scheme 633; The Employees' Provident Funds Act, 1952 634; Salient Features of the Employees' Provident Funds Scheme 639; The Employees' Family Pension Scheme 643.

<b>25. Welfare Fund Legislation in India</b>	<b>644</b>
The Coal Mines Labour Welfare Fund Act, 1947 645; The Mica Mines Labour Welfare Fund Act, 1946 649; The Iron Ore Mines Labour Welfare Cess Act, 1961 651; The State Labour Welfare Fund Acts 652.	
<b>26. The International Labour Organisation</b>	<b>657</b>
Early International Efforts to Regulate Conditions of Labour 657; Preamble to the Constitution 658; Fundamental Principles and the Philadelphia Charter 659; Membership 661; Organisation 662; Conventions and Recommendations 665; Major Activities of the ILO 670; International Labour Standards and Their Influence on Indian Labour Legislation 680; Difficulties in the Adoption of Conventions and Recommendations 701; Problems of Ratification 702; Conventions Ratified by India 706.	
<b>27. The 20-Point Socio-Economic Programme</b>	<b>711</b>
Bonded Labour 712; Review of Laws Concerning Minimum Agricultural Wages 720; Workers' Participation 721; Apprenticeship Scheme 728.	
<i>Appendices</i>	<b>730</b>
<i>Index</i>	<b>754</b>

## LIST OF TABLES

1. Number of Trade Unions, Total Trade Unions' Membership and Average Membership Per Union in Great Britain (1956-1969).	78
2. Concentration of Trade Union Membership in Great Britain (1965 and 1969)	79
3. Number of Strikes and Lockouts, Workers Involved and Mandays lost in India (1921-1929)	95
4. Number of Registered Trade Unions and Their Membership in India (1930-31—1939-40)	102
5. Number of Strikes and Lockouts, Workers Involved and Mandays Lost in India (1930-1939)	103
6. Number of Trade Unions Affiliated to Indian Federation of Labour and Their Membership (1942, 1944, 1946)	107
7. Number of Registered Trade Unions and their Membership in India (1940-41—1946-47)	110
8. Number of Strikes and Lockouts, Workers Involved and Mandays Lost in India (1940-1949)	111
9. Index of Real Earnings of Workers in India (1939-1945) (Base Year 1939=100)	112
10. Index of Profits in Selected Industries in India (1940-1946) (Base Year 1939=100)	112
11. Number of Registered Trade Unions and Their Membership in India (1947-48—1949-50)	122
12. Number of Registered Trade Unions (Workers' and Employers') and Membership of Unions Submitting Returns in India (1950—1968)	128

13. Number of Registered Federations Submitting Returns, Number of Affiliated Unions and Income and Expenditure of Federations Submitting Returns in India (1951-52—1968)	135
14. Membership of Central Federations of Trade Unions in India (1949-1968)	138
15. Number of Industrial Disputes Resulting in Work-stoppages; Workers Involved and Mandays Lost in India; Frequency and Severity Rates and Index of Industrial Unrest for Manufacturing Sector only (1950-1970)	142
16. Average Membership per Union (Submitting Return) in India (1927-28—1968)	151
17. Frequency Distribution of Indian Trade Unions Submitting Returns According to Membership (1956-57 and 1964-65)	152
18. Income and Expenditure of Workers' Registered Trade Unions in India (1951-52—1968)	156
19. Percentage Distribution of Expenditure of Workers' Unions in India (1956-57—1962-63)	157
20. Percentage Distribution of Sources of Income of Workers' Unions in India (1956-57—1962-63)	158
21. Percentage Distribution of Industrial Disputes Resulting in Work-stoppages in India by Causes (1961-1970)	244
22. Percentage Distribution of Industrial Disputes Resulting in Work-stoppages in India by Results (1961—1970)	252
23. Number of Joint Management Councils Functioning in India (1958-1970)	335
24. Percentage of Factories Remaining Uninspected in Different Provinces in 1939 and 1943	375
25. Coverage of Various Factories Acts in India (1881—1948)	400
26. Maximum Hours of Work Prescribed, and Extent of Night Work Prohibited, Under Various Factories Acts in India (1881-1948)	401
27. Coverage of Various Factories Acts in Great Britain (1802-1961)	402
28. Maximum Hours of Work Prescribed Under Various Factories Acts in Great Britain (1802-1961)	403
29. Extent of Night Work Prohibited Under Various Factories Acts in Great Britain (1802-1961)	404

30. Risks Covered Under Social Security Laws in India	558
31. Amount of Compensation in Certain Cases Under Workmen's Compensation Act, 1923	572
32. 'Contribution Periods' and Corresponding 'Benefit Periods' Under the Employees' State Insurance (General) Regulations	596
33. Contribution Periods and the Corresponding Benefit Periods in Respect of Employees Covered after the 'Appointed Day'	597
34. Weekly Rates of Contribution Payable by Insured Employee and his Employer Under the Employees' State Insurance Act	598
35. Standard Benefit Rates for Insured Employees in Various Wage Groups Specified Under the Employees' State Insurance Act, 1948	604
36. Categories of Workers Entitled to Bonus, and Qualifying Conditions Under the Coal Mines Bonus Scheme	635
37. International Labour Conventions Ratified by India and Important Legislative or Other Measures Adopted to Implement their Provisions	707



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## CHAPTER 1

### TRADE UNIONISM

Trade unions have become an integral and powerful factor in the contemporary system of producing and distributing goods and services. Wherever modern industrialisation has touched, trade unions have followed. They are exercising a strong influence on the methods of production of goods and services, their distribution, the allocation of economic resources, the volume of employment and unemployment, the character of rights and privileges, politics and policies of governments, the attitudes of millions of persons, the status and standing of large masses of the population and the very nature of economic and social organisations. Under such conditions, their role has evoked deep and wide controversies. For a developing economy such as ours, trade unions and their policies are of special significance. Therefore, in order to assess their role and prospects, it is essential to go into the origin and development of the trade union movement and to analyse the factors that have helped the trade unions become a mighty torrential movement from very small and moderate beginnings.

#### Definition

Numerous authors and books have discussed the origin, growth, structure and functions of trade unions without formulating a formal definition of a trade union. Of all the definitions of a trade union, one by the Webbs is the most outstanding and oft-quoted. The Webbs say, "A Trade Union, as we understand the term, is a continuous association of wage-earners for the purpose of

maintaining or improving the conditions of their working lives.”<sup>1</sup> Dankert thus formulates what he calls a comprehensive general definition, “A *Trade Union* is a continuing organization of employees established for the purpose of protecting or improving, through collective action, the economic and social status of its members.”<sup>2</sup>

A comparison of these two definitions shows that Dankert has not been able to improve upon the Webbs’ definition in any significant manner, except that the expression “wage-earners” has been substituted by the term “employees” and Dankert has added the expression “collective action” as the trade union method, whereas the Webbs are silent in this regard. As there are numerous differences in the structure, objectives, methods, types and conditions of membership of the organisations going by the common name of “trade union”, it is difficult to evolve a definition which will cover all unions in all their distinguishing features. Ultimately, a union is “what it does”<sup>3</sup> or unionism is “what it is.”<sup>4</sup>

It is needless to go into the controversies raised by the Webbs’ definition or other definitions, for, however a ‘trade union’ is defined, the functions of trade unions have become too well-established to be mistaken and no particular definition is necessary in order to recognise and specify the main features of a trade union. Different definitions simply seek to emphasise those particular aspects and functions of trade unions which different authors may have in their view. As the discussion on the objectives of, and the methods adopted by trade unions for the achievement of their goals progresses, various definitions will unfold themselves.

## Origin

Authors and students of the trade union movement may differ with regard to the proper functions, objectives, role and methods of trade unions, but they are all agreed that the trade union movement is the result of the modern industrialisation. Though attempts have been made to trace the ancestry of the trade unions to the medieval period and even to earlier ages, they have not succeeded in any convincing manner.

1. Sidney and Beatrice Webbs, *The History of Trade Unionism*, p. 1.
2. Clyde E. Dankert, *Contemporary Unionism*, p. 1.
3. *Ibid.*, p. 3.
4. R.F. Hoxie as quoted in *Ibid.*, p. 3.

Institutions grow to meet the needs of a particular time and place. Trade unions have grown in response to the peculiar needs and problems which the wage earners have had to face in the course of industrialisation under the capitalist economic system. What are the features of the process of industrialisation that have necessitated the origin of trade unions?

### 1. *Separation between capital and labour*

England of the second half of the eighteenth century is the first home of trade unions. It was during this period that the economic system of England was undergoing rapid changes. An economic order, commonly known as the capitalist economic system, emerged. New industries based on iron and coal came into existence; they underwent rapid technological changes; and large-scale production replaced the small workshops of the past. In the pre-industrial society, the worker producer owned his tools, provided his own raw materials, worked in his own home, owned the final product mostly for his own consumption and occasionally for sale in the market. The worker was his own master, his own capitalist and his own seller. But under the new economic system, demanding a large accumulation of capital and congregation of a large number of workmen at one place, capital and labour came to be supplied by two different sets of persons.

The capitalist mode of industrialisation has involved a separation between the ownership of capital and labour, both of which are necessary for the production of goods and services. As a matter of fact, the modern factory system was preceded by the creation of a class of landless labourers—the proletariat which had no other means of livelihood except the use of its labour power. Similarly, a class of owners of capital grew which used its capital for earning profits. A class of people came to the labour market to sell its labour power—the only source of its livelihood, and became the sellers of labour. The other class, with large aggregates of capital at its disposal, came to the labour market to buy labour power and to put it to productive use. As buyers, they were interested in paying the lowest possible price and, as suppliers of labour, the labourers were interested in securing the highest possible price. Thus, the two classes with divergent and conflicting interests came together giving rise to a conflicting relationship.

The capitalist economic order is based upon the notion that

the pursuit of his self-interest by every individual leads to the establishment of an economic and social order which serves best the interests of all concerned. The capitalist economic system is an order of all pervading conflict of interests.

The owners of capital and the entrepreneurs are motivated by the goals of profit maximisation. This drive of profit making led to excesses in the early phases of industrial revolution which initiated the process of industrialisation. Excessive hours of work, insanitary working and living conditions, overcrowding, the employment of young children, inflicting of corporal punishment for the maintenance of industrial discipline, competitive debasement of wages and unemployment were the main features of industrialisation under early capitalism. Wherever industrialisation went under the capitalist framework, these processes were repeated. Widespread poverty and misery resulted from the working of an unbridled competitive economy. In vain did the workers try to protect their economic interests and status by submitting petitions to kings, courts and parliaments invoking the implementation of protective regulations of the medieval period.

### 2. *Philosophy of laissez faire*

The dominant philosophy of *laissez faire* and economic liberalism prevented the State from coming to the rescue of the suffering mass of industrial workers. In the eyes of law, the workers and the employers were equal and had equal claims to the protection afforded by it. Their relationship was supposed to be based upon freedom of contract, freely and voluntarily entered into. The disgruntled, dissatisfied and oppressed workers were supposed to be freepersons; they were free to choose their employers, occupations and place of work and they were free not to work under terms and conditions which they did not like. The terms and conditions of employment were further supposed to be determined by bargaining between the individual workman and his employer on the basis of equality. Under these prevailing notions and doctrines, the State remained silent and, through a policy of non-intervention in the economic life of the community, further heightened the degree of exploitation, misery and suffering of the working class. Even the rudimentary protections that the craftsmen enjoyed in the medieval times disappeared under the impact of rising capitalism.

### 3. *Lack of bargaining power on the part of workers*

Whatever might have been the position and the status of the industrial workers in the eyes of law, in reality, the individual workman, deprived of any independent means of livelihood and being the seller of the most perishable commodity, was no match for his employer either in the bargaining skill or in the knowledge of the trade and market conditions or in economic resources and waiting power. The freedoms of the labour market were illusory and non-existent. It was the competition between a pigmy and a giant that, as a matter of fact, determined the terms and conditions of employment in favour of the latter. It was the employer who unilaterally determined the wage rates, the hours of work and other conditions of employment without any semblance of bargaining. The workers had either to accept the job on the terms and conditions offered by the employers or to give it up, remain unemployed and starve. The individual workman was dispensable to the employer. The mass of the 'reserve army' of the unemployed was always knocking at the factory gates looking for employment to take the place of the workmen who dared defy the employer. It is logical and natural that the workers accepted the former. To have a job was always better than to have none.

### 4. *Individual dispensability but collective indispensability*

However, under these deteriorating conditions and all-enveloping darkness, there was one ray of light and hope for the working class. The individual workman was dispensable to the employer but workmen, collectively, were indispensable to him. The employer could easily and always get rid of the services of a few workmen and replace them by others, but he could not dispense with the services of all his workmen and readily replace them. Though it took a long time to come, it must have been a great moment in the history of the working class when this realisation came. It is also true that this realisation has not come to many workers of many countries even today. But when it came, it heralded the dawn of a new day after a long and dreary night of mute submission to the economic needs of the employers, to their whims and vagaries and to the so-called natural laws of the economic system.

### **Emergence of Trade Unionism**

It was under these conditions that the workers' organisations

started in a rudimentary form. Workers, working under a common employer, faced with common problems and common tasks, developed common sentiments. They developed group interpretations and reactions to the external environment, social and economic situations and tried to organise themselves into associations which could meet the employers on a basis of equality. Thus "labour's organisations and concerted efforts owe their inception and growth to one of the most basic of the problems of social life, the struggle for possession of material things, and to some of the most powerful of human motivations."<sup>5</sup>

There were many hurdles to be crossed before the inchoate labour organisations could develop into full-fledged stable trade unions. There were internal dissensions, persistent and determined opposition from the employers, merciless persecution and suppression by the State and full-throated condemnation of trade unionism by the advocates of free competition and *laissez faire*. The incipient labour organisations, which had their birth during the last quarter of the 18th century in England and much later in other countries, survived the many-pronged attacks against them and succeeded in overcoming formidable obstacles. They, finally passing through many vicissitudes of fortune, have come to occupy an integral and prominent place in the economic and social life of today. This shows the inherent strength of the working class and the utility of such organisations in meeting the changing needs of time.

The foregoing few pages give a brief outline of the processes of economic, social and political changes that led to the emergence of the trade union movement. Of these processes of change, the State's attitude of utter indifference and connivance at the sufferings and privations of the working masses arising from the capitalist system of production stands out most prominent. It was this indifference that induced and forced the workers to rely on their own strength of unity, combination and concerted efforts when they felt helpless and desperate in the face of deepening capitalist exploitation.

One may say that machine is the cause and the labour movement is the result;<sup>6</sup> another may say that the trade union appears as a group interpretation of the social situation in which workers find

5. Harris A. Millis and Royal E. Montgomery, *The Economics of Labor*, Vol. III *Organized Labor*, p. 3.

6. Frank Tannenbaum, *The Labor Movement*, p. 29.

themselves, and as a remedial programme in the form of aims, policies and methods;<sup>7</sup> still another may say that trade unionism arises from the job consciousness and scarcity of job opportunities.<sup>8</sup> Nonetheless, it may also be contended that labour organisations, perhaps, would not have emerged but for the attitude of the State which exhibited, in the early periods of modern industrialisation, a callous disregard to the sufferings and the needs of the toiling masses.<sup>9</sup> If the State had shown even a modicum of responsibility for the protection and welfare of the working class, which it is doing in many cases at present, labour organisations, perhaps, would not have come into existence and if they had, they would have taken a course, pursued policies and adopted methods, different from those existing today.

### Legal and Other Handicaps of Early Trade Unions

When the growing sufferings and disabilities of workers arising from the ruthless exploitation by the capitalist employers, the gradual disappearance of the customary and traditional protective legal sanctions and the indifference of the State forced the workers to organise, the State, not being content with an attitude of indifference, came down hard on the trade unions. "Combinations of workmen to better their conditions were declared illegal as early as the fourteenth century, and every century thereafter, the law put down such combinations."<sup>10</sup> The harshness with which attempts were made to suppress the trade unions after the advent of the factory system was unprecedented. In England, in France, in Germany and in the United States, combinations of workmen *per se* were declared illegal. The judges punished the members of trade unions and participants in strikes with imprisonment and fines. Trade unions were treated as criminal conspiracies, functioning in restraint of trade, violating freedom of contract, and inducing workmen to break their contracts with the employers.<sup>11</sup>

The British Parliament enacted the Combination Acts, 1799

7. Robert F. Hoxie, *Trade Unionism in the United States*, p. 58.

8. Selig Perlman, *A Theory of Labor Movement*, pp. 6-7.

9. The modern State, according to Marx, being the managing committee of the bourgeoisie could not be expected to behave otherwise.

10. Leo Huberman, *Man's Wordly Goods*, p. 154.

11. For details of antitrade union laws, see Chapter 17.

and 1800 prohibiting the workmen from combining and declaring any such combinations illegal. It would not be out of place to quote here from a judgement of 1816 sentencing nine Stockport hatters to two years' imprisonment for conspiracy. The Judge, Sir William Garrow, in a judgement, remarked, "In this happy country where the law puts the meanest subject on a level with the highest personages of the realm, all are alike protected, and there can be no need to associate.... A person, who like Mr. Jackson has employed from 100 to 130 hands, common gratitude would teach us to look upon him as a benefactor to the community."<sup>12</sup> It would not serve any purpose to fill in pages with quotations from numerous judgements, but one or two more quotations would illustrate the point sought to be made here. In the U.S.A. also, the courts, while interpreting the common law and its application to labour organisations applied to them the same doctrine of criminal conspiracy and restraint of trade. In the Philadelphia Cordwainers Case of 1806, the court, with untroubled simplicity, declared that "a combination of workmen to raise their wages may be considered from a two-fold point of view; one is to benefit themselves, the other is to injure those who do not join their society. The rule of law condemns both."<sup>13</sup> This was not a rare judgement in the U.S.A.; the viewpoint was reiterated with or without modifications in many judgements. In India as late as 1921 in the Buckingham & Carnatic Mills case, the Madras Labour Union led by Wadia was indicted as a criminal conspiracy and damages were awarded against the union.

In spite of these efforts at suppression, trade unions continued to grow, sometimes working underground and sometimes openly, and the hand of law failed to break the resistance of the workers to the excesses of capitalist factory system. They continued to defy the laws prohibiting the combination of workmen; trade union organisations multiplied and trade unionism spread. Under incessant pressures from the workers and their organisations, the law and the attitude of the courts gradually came to be modified. The history of the trade union movement everywhere is a history of blood, tears and toil. That is why Millis and Montgomery, while commenting on the British policy and law relating to labour organi-

1 : As quoted in Leo Huberman, *op cit.*, p. 155.

13. As quoted in Harry A. Millis and Royal E. Montgomery, *op. cit.*, p. 503.

sations remark, "British policy and law relating to labour combinations have undergone an interesting development—from stout opposition and attempts at outright suppression to limited acceptance and toleration, then to general acceptance and comparatively few restrictions."<sup>14</sup> This trend in the British policy and law relating to labour organisations is common to all capitalist countries. Trade unions in all these countries have passed through these three stages: (a) outright suppression, (b) limited acceptance and toleration, and (c) general acceptance and recognition. However, trade unions in the world today are not at the same stage of development everywhere. In some countries, especially in those under colonial rule and dictatorships, trade unions are struggling hard to cross the first stage; in the underdeveloped countries recently freed from colonial yoke, they are in the second stage; and in the full-fledged industrially advanced capitalist democracies, they are in the third stage. In the communist countries, trade unions occupy an altogether different position and status where they represent the workers freed from exploitation and where they do not have exploiting employers to fight.

### Objectives of Trade Unions

A discussion of the objectives of trade union movement cannot be better begun than by a quotation from Samuel Gompers—the founder President of the American Federation of Labour. To quote him, "Trade unions.....were born of the necessity of workers to protect and defend themselves from encroachment, injustice and wrong .... To protect the workers in their inalienable right to higher and better life; to protect them, not only as equals before the law, but also in their rights to the product of their labor; to protect their lives, their limbs, their health, their homes, their fire-sides, their liberties as men, as workers, as citizens; to overcome and conquer prejudice and antagonism; to secure them the right to life, and the opportunity to maintain that life; the right to be full sharers in the abundance which is the result of their brain and brawn, and the civilization of which they are the founders and the mainstay."<sup>15</sup> Trade unions are essentially an organisation for the

14. *Ibid.*, p. 490.

15. As quoted in George Seldes, *The Great Quotations*, p. 941.

protection and promotion of the interests of their members in particular, and workers in general, as opposed to those of the employers. The primary function of trade unions is to protect the workers against the excesses committed by the employers and to meet other needs of the workers—economic and political.

The aims, philosophies, theories and social and economic programme of the trade union movement are all related to one supreme goal i.e. the protection and promotion of the interests of the working class. All other objectives flow from this supreme goal. However, as this goal is sought to be achieved by multitudes of trade unions working under vastly different concrete economic, political and industrial environments, different forms of trade union organisations, different subsidiary short-term goals and different methods have emerged. These variations have to be viewed in the light of the needs of the particular situation, changing times and different levels of workers' consciousness. The long-term goal of securing recognition to the workers' importance, their role and position in society and promoting their multilateral interests can be achieved only through short-term expediencies and subsidiary objectives. Therefore, different programmes of actions have evolved in a dynamic manner to keep abreast of the changing times. It has become customary to differentiate between trade unions with respect to their objectives, methods, policies and programmes of actions, but one should not lose sight of the fact that all these differences are united by the ultimate common goal and are but one expression of the fact that methods and policies, in order to be successful, must be adjusted to the needs of real situations.

This generic goal of protecting and promoting workers' interests consists of such specific objectives as: (a) improved economic status; (b) shorter working day; (c) betterment of working and living conditions; (d) income security e.g. pension, provident fund, compensation for work-injuries and unemployment, obtaining job security such as protection against layoff, retrenchment and victimisation, etc.; (e) better health, safety and welfare standards; (f) respect for the personality of the workers, humane treatment from supervisors and others; (g) a greater voice in industrial administration and management by the establishment of industrial democracy; and (h) improving political status.

It should be noted here that the listing of these objectives is not in order of priority nor does it indicate the relative emphasis

given to them. The same union over a period of time may shift the emphasis from one objective to the other. The early unions everywhere emphasised the wage issue much more than any others. Later on, the hours of work and still later, the income security aspects came to occupy greater prominence. Which objective will come to occupy a higher priority for which unions and when is a function of time and place.

It is pertinent here, while discussing the fundamental objectives of the trade union movement, to refer to the ideas of Perlman. According to him, the trade unions have a home-grown philosophy based on workers' experience and psychology.<sup>16</sup> Trade unions, growing out of the workers' day-to-day experience, have the only objective of protecting the jobs of the workers and securing day-to-day improvements in the working and living conditions. Such trade unions are neither concerned with the fundamental reconstruction of the economic system nor with the various politicalisms and ideologies. It is the outside intellectuals, whether they are Marxists, Efficiency Experts or Ethicals who, according to Perlman, seek to impose political ideologies on the trade union movement.<sup>17</sup> It is partly true that trade unions, left to themselves, would devote their attention to workers' sectional and temporary advantages. Being voluntary associations, trade unions are under constant pressure of the immediate and proximate needs of their members, and distant and long-term objectives may not have the same urgency.

But it is also equally true that trade unions may develop interests in political ideologies and issues on their own as they learn out of their experience and find that temporary palliatives provide no permanent cure. When the air is thick with political discussions and different view-points are under circulation regarding the nature and functions of the economic systems, it is not unnatural for many of the trade unions to get influenced by them. Thus, political ideologies and objectives may grow out of the day-to-day activities of trade unions without being imposed from outside intellectuals.

Even in the U.S.A., where the dominant trade unions express their faith in the essentials of the free enterprise system and disclaim any attachment to socialist ideals, advocates of capitalism appre-

16. Selig Perlman, *op. cit.*, pp. 237-279.

17. *Ibid.*, pp. 280-303.

hend that the trade unions' support of capitalism would be temporary. Walter Gordon Merritt, while surveying the ultimate destiny of the American labour movement expresses this apprehension when he says, "A real test may come when the economic forces inherent in the free enterprise system compel the union leader to return with an empty game bag, either because of a depression or because the system cannot increase labor costs. Will labor then be satisfied to continue to accept the benefits that free enterprise has left to offer, or will new leaders, understanding the art of damagoguery and mindful of the emotions that have been nourished in the hearts of union members, possess the field with dreams of a promised land?"<sup>18</sup> In this context attachment to socialist ideas becomes as much a part of home-grown philosophy of labor as attachment to jobs and job-security, and political ideologies cease to be foreign to trade unions. It is in this context again that Merritt, while talking of the ultimate goal of unionism, quotes Gompers with apprehension, who, when questioned about the ultimate goal of unionism, said, "What does labor want? It wants the earth and the fullness thereof."<sup>19</sup>

Further, it should be emphasised that changes in the economic system, whether demanded by trade unions or advocated by outside intellectuals, are not ends in themselves. They are thought to be a means for securing the permanent interests of the working class which is the supreme goal of the trade union movement as a whole. A particular trade union may not be concerned with the working class as such, but the trade union movement is.

The trade union movement in many countries and some trade unions in all countries have developed political ideologies which advocate replacement of the capitalist economic system by socialism. The legitimacy of such an ultimate political objective is questioned by many. It is in regard to the political objective of changing the capitalist economic system and replacing it by socialism that controversies are raging everywhere. It is contended that the objective of changing an economic system should really be sought by political parties competent to develop and propagate political ideologies. Trade unions as such should involve themselves in only the day-to-day working conditions of their members. Any involvement on the part of the trade unions with the fundamental political objectives

18. Walter Gordon Merritt, *Destination Unknown*, p. 366.

19. *The American Federationist*, April 1950, p. 8.

of bringing about changes in the economic system as a whole would exercise a divisive influence on the rank-and-file. To the advocates of this view-point, nursing or fighting for a political ideology is not a legitimate function or objective of a trade union. While they support the workers' right as citizens to become members of political parties standing for socialism and in that capacity to work for the overthrow of capitalism and the establishment of a socialist order, they deny that trade unions should be actively associated with movements for fundamental changes in the economic system.

On the other hand, Socialists and Marxists argue that in the struggle for the establishment of socialism, trade unions cannot and should not remain neutral. Being the primary organs of the working class whose deliverance lies in socialism, trade unions should actively engage in political education of the members in favour of socialism.

## Methods of Trade Unions

How do the trade union movement and trade unions seek to achieve their goals as discussed above? There is no method and means which trade unions in their long history have not used to achieve their goals and objectives. When they were illegal, they defied the law either openly or surreptitiously; they resorted to illegal strikes and even to physical violence when the needs so demanded. When they came to be recognised, they tried to influence the course of legislation to get it modified to make their position secure and protect the interests of their members. They developed organisations for mutual help, protection and insurance to meet specific needs. The classic description of trade union methods by the Webbs as consisting of mutual insurance, collective bargaining and legal enactment, still holds good, but what the Webbs call legal enactment is only a part of the broader political action, which the trade unions undertake for the achievement of their goals. Each of these methods i.e. (1) mutual insurance, (2) collective bargaining, and (3) political action needs further elaboration.

### 1. *Mutual insurance*

From their very inception, trade unions have been spending a part of their income in providing insurance and other welfare benefits for improving the conditions of their members, promoting good-

will among them and maintaining solidarity within the organisation. The nature and extent of the benefits provided has gradually expanded during the course of years. The effectiveness of this method is directly dependent upon the income of trade unions. Where trade unions are rich, they are in a better position to provide insurance or other benefits to their members. On the other hand, it is futile to expect much from the poor trade unions which are all the time worried about their finances. The funds for mutual insurance may come from membership subscriptions, special levies and donations.

The British trade unions have a strong tradition of adopting mutual insurance for the benefit of their members. Even prior to 1880's, many trade unions in Great Britain provided insurance to their members against such risks as sickness, accident, disablement, old age, death and also against unemployment. However, the nature and scale of benefits provided varied considerably, depending on the financial position of trade unions and the extent of incidence of particular risks. It were principally the craft unions which took to mutual insurance. An appreciable number of trade unions functioned as Friendly Societies and many of them voluntarily registered themselves with the Registrar of Friendly Societies.

Of the friendly benefits, the most generally provided was funeral benefit. The funeral benefit, in addition to covering funeral expenses, also covered a grant to the widow of the deceased member, his young children and parents. In some cases, sickness and accident benefits were combined. Many trade unions also provided for medicine and medical attendance. Accident benefit might be in lump sum or in the form of periodic payments during incapacity. Only a few trade unions could provide for superannuation benefit. Unemployment benefit could consist of an out-of-work allowance, the tramp benefit and emigration benefit. Tramp benefit was paid in the form of daily or weekly allowance to members travelling in search of work.

Although from 1880's, the British trade unions started laying a greater importance to collective bargaining and subsequently to political action also, mutual insurance has continued to be emphasised by many trade unions, particularly the craft ones. However, mutual insurance as a trade union method has increasingly been overshadowed by the provision of social security and welfare measures introduced at the instance of the State. Now that a comprehensive system of national insurance, supplementary benefits and

health services has been established in Great Britain, the trade unions there do not have to worry much over the provision of friendly benefits for their members. Nonetheless, many trade unions still supplement the benefits available under the State schemes. Besides, the British trade unions have also come to spend a substantial amount over many new items, which were not or only scantily covered under their earlier activities. In this regard, particular mention may be made of workers' education, recreational and educational activities, housing, banking, cooperatives and payments during strikes, etc.

The American trade unions have also a similar tradition of providing, out of their funds, benefits to meet the economic uncertainties to which their members are exposed. Likewise, they have also developed educational and cultural facilities, banking, housing and similar ventures.

The Indian trade unions have lagged far behind their counterparts in Great Britain and the U.S.A. in taking recourse to mutual insurance primarily because of their poor financial position. Only a few trade unions in India have been able to develop certain welfare activities, not to speak of mutual insurance against the more common risks of life. The Textile Labour Association, Ahmedabad and the Madras Labour Union deserve to be mentioned here for their welfare activities.

In general, it were the early trade unions, particularly the craft ones, that emphasised mutual insurance for improving the lot of their members. At that stage, they were unable to adopt the method of collective bargaining owing to the legal handicaps and openly hostile attitude of the employers. At the same time, they were not in a position to engage in political activities for securing protective labour legislation or other measures at the instance of the State. However, in most capitalist countries, once trade unions obtained legal recognition, they started giving more importance to collective bargaining. In these countries, collective bargaining has now become the most outstanding of the methods adopted by the trade unions. Besides, in many countries, trade unions have succeeded in improving the lot of their members by political action, which includes exerting pressures for protective labour legislation and welfare amenities and establishing political parties of the working class. In spite of the gradual shift in emphasis, the method of mutual insurance has come to stay along with the methods of collective

bargaining and political action.

## 2. *Collective bargaining*

Another method used by trade unions for improving the conditions of their members is collective bargaining. Under this method, their representatives bargain with the employer over the terms and conditions of employment and enter into agreement with him. The agreement thus arrived at between the representatives of a trade union and the employer is known as a collective agreement.

The method of collective bargaining came to be emphasised after the trade unions secured recognition under law and became free from the criminal and civil disabilities which they had to suffer in their early stage. At that stage, collective action on the part of workers for improving conditions of employment could be illegal under the doctrine of restraint of trade and individual workmen could be indicted on the charge of breach of contract. Under such conditions the workers could bargain with the employer only individually. The decision of the worker to accept or refuse the conditions offered by the employer was made with reference to his own strength or weakness as a bargainer. However, when the trade unions came to be entrenched on a sound footing, it was collective bargaining, more than any other method, that witnessed the widest adoption. The method has now assumed a great significance in the trade union programme of action in almost all the capitalist countries.

Evolution of collective bargaining has, however, not been uniform everywhere. Considerable variations can be seen in the process of collective bargaining, its area, subject matters covered, nature of collective agreements and legal provisions having a bearing on the method. Many of these variations may be explained in terms of variations in the nature and extent of trade union growth, but there are other influencing factors also. In countries where trade unions are in a highly developed stage, as in the U.S.A. and Great Britain, collective bargaining is extensively used.

The bargaining units vary greatly in size or make-up. In many cases, trade unions enter into collective agreements with the employers at the local level i.e. at the factory, mine or the shop level. Even within a factory or other industrial establishments, different craft unions may bargain separately with the employer. In other

cases, a combination of trade unions, whether craft, industrial or general, operating in a particular region may bargain at the regional level with one employer or a group of employers. Similarly, collective bargaining may also take place at the industry or national level. With the formation of trade unions at the industry or national level, there has been a strong trend toward industry or nationwide collective bargaining. In many cases, bargaining takes place with a single employer, but in many others, employers also unite or cooperate for bargaining purposes. During recent years, there has been a marked growth of multiunit bargaining.

A wide variety of subjects has come to be included in collective agreements. As a matter of fact, collective agreements may relate to any kind of employment conditions. Some of the items most frequently covered under collective agreements include: wages, hours of work, physical working conditions, apprenticeship, incentive payments, welfare amenities, promotion, bonus, gratuity, superannuation and economic benefit plans. Even in cases where many of the employment conditions are regulated by law, the trade unions often bargain with the employers for securing more improved standards than what are prescribed under the law. A collective agreement may deal with a single issue or may cover a wide range of subjects.

One important consequence of collective bargaining for the determination of terms and conditions of employment has been that trade unions are enabled thereby to participate in the decision-making process regarding wages, hours of work, working conditions, etc. These issues were unilaterally decided by the employer, but with the advent of collective bargaining, they have become subjects of bilateral negotiations. What was hitherto treated as the management's prerogatives has come to be controlled and regulated by collective bargaining. Thus, collective bargaining has succeeded in introducing an element of industrial democracy in the field of industrial and labour management.

In general, the trade unions and employers engage in collective bargaining voluntarily. However, in some cases, they are under the legal obligation to do so. Thus, in the U.S.A., both the trade unions and employers are obligated under the Labour Management Relations Act, 1947 to bargain with each other. Refusal to bargain either on the part of the trade union or the employer is an unfair labour practice forbidden under the Act. Besides, in many countries,

certain issues having a bearing on collective bargaining have come to be regulated by law e.g. determination of the representative character of a trade union and its recognition for the purpose of bargaining, certification of collective agreements, control of certain unfair practices, and union security clauses, etc. These legal limitations are, for the most part, intended to ensure a healthy growth of collective bargaining rather than to impair it. The trade unions and the employers continue to enjoy considerable freedom at every stage of bargaining.

Collective agreements may be written or unwritten. Whether written or unwritten, they may be looked upon as legislative acts which set forth rules governing employment relationship for a given period of time. These laws are, however, private in nature. In many cases, they are of a greater importance to the workers than many of the labour laws passed by legislature. Like the general laws, collective agreements also involve the question of interpretation which is usually solved by the provision of a grievance machinery.

Traditionally, collective agreements had been looked upon as private agreements not enforceable in a court of law i.e. law did not look upon them as civil contracts which, in case of a party backing out of the obligations of the contracts, could be legally enforced.

The main sanction behind a collective agreement is supposed to be the economic strength of the parties. In case of reluctance of a party to abide by and fulfil its commitments under the agreement, the other party can resort to economic pressures to force the other to meet its obligations. The same economic pressure, which is at the back of the signing of the collective agreement, is also the main instrument for its implementation.

However, many countries are not prepared to allow the parties the freedom to resort to economic warfare in order to secure the implementation of a collective agreement, though the same countries are prepared to permit the right to engage in economically coercive measures in order to arrive at an agreement. Collective agreements now cover the terms and conditions of employment of such a large number of workers spread over all kinds of industries and employments that to permit the parties to resort to strike and lockout for securing the implementation of the collective agreements is patently wasteful, uneconomic and unnecessary. There-

fore, a trend has developed to treat collective agreements as solemn contracts to be enforced by courts of law in case a party so desires i.e. collective agreements tend to cease to be private agreements and become agreements with social and public consequences. The Labour Management Relations Act, 1947 of the U.S.A. has inserted a provision making collective agreements enforceable in a court of law. Similarly, the British Industrial Relations Act, 1971 has also made collective agreements enforceable by a court of law at the instance of either of the parties. Collective agreements have secured a limited degree of enforceability in India also. Under the Industrial Disputes Act, 1947, if a collective agreement is registered with the appropriate government, it becomes a settlement and the violation of the settlement becomes a penal offence under the Act. Nonetheless, collective agreements are still not treated as contracts enforceable in a court of law under any other civil law in India today.

A notable feature of collective bargaining in some countries, particularly those having planned economies, is that, instead of remaining confined to bilateral negotiations between the trade unions and the employers, it has come to take into consideration the interests of the community also. In such countries, many important issues having a bearing on employment conditions are decided by tripartite forums consisting of representatives of the trade unions, employers and the public.

This description of the role of collective bargaining as a method used by the trade unions to attain some of their goals should have made it clear that the freedom of collective bargaining implies the right to strike in the case of a union and lockout in the case of an employer in the event of the failure of negotiations. Collective bargaining involves mutual negotiations and failure of negotiations may lead to the use of coercive measures such as strike, picketing, boycott and lockout, etc. There are many persons who support collective bargaining as a method of settling industrial disputes under the impression that this ensures their peaceful and prompt settlement, but they forget that settlement of disputes by free mutual discussions and collective bargaining includes the right of the parties to resort to economic pressure in case they think it necessary. The right to strike is an integral part of collective bargaining. Any restriction on the right to strike weakens the process of collective bargaining. In the words of

Taylor, "No one should have any doubt about the unlikelihood that collective bargaining can be maintained in the absence of right to strike and lockout."<sup>20</sup>

### 3. *Political action/Legal enactment*

In many countries trade unions engage in political action for securing better working and living conditions for the workers. The main features of trade unions' political action are: exerting pressure for protective or other prolabour legislations and welfare amenities at the instance of the State; setting up of labour parties or developing allegiance to one political party or the other; and securing control over industry. Unlike mutual insurance and collective bargaining, which are designed to benefit only the trade union members or employees of a particular plant, industry, craft or a group of them, political action is intended to benefit the working class in general. The trade union practices with respect to political action also vary widely.

Exerting pressure for securing protective or other prolabour legislations has been the most extensively used of the political actions. In the early stages of their growth, when the various legal disabilities prevented the trade unions from engaging in collective bargaining with their employers, there was a strong pressure for protective labour laws for regulating such conditions of employment as hours of work, rest period, weekly rest, safety, employment of children and women, compensation against work-injuries, protection of wages, etc. The series of protective labour laws that came to be adopted in Great Britain during the 19th century was essentially the outcome of the efforts of organised labour. In the U.S.A. also, the early trade unions demanded protective labour laws, particularly relating to hours of work, and secured the same. Pressures for new labour legislations and improvement over the existing ones are still made by trade unions in many parts of the world. Similarly, the trade unions also seek to obtain welfare amenities under laws of the State. In many countries, trade unions have been able to secure such statutory welfare amenities as housing, recreational and educational facilities, medical and health facilities, etc.

In some countries, the trade unions have also formed their

independent labour parties or have come into relationship with other political parties of their choice. In Great Britain, the TUC established the Independent Labour Party. Similar labour parties have come into existence in many other countries, particularly those which have recently become independent. It is expected that the labour parties, on coming into power, will take effective measures for the improvement of the conditions of the working class. In India, the trade unions have formed their national centres having allegiance to one political party or the other. Thus, the INTUC has a close relationship with the Indian National Congress, the AITUC with the Communist Party and the HMS with the Socialist Party. In the past, the American trade unions had a pragmatic approach towards political action. Their main political programme was to organise the votes of trade union members in such a manner as to reward the 'friends' and punish the 'enemies' i.e. to vote for a prolabour candidate in the Presidential elections and to try for the defeat of the one who was not prolabour. However, the American trade unions are now fast discarding their orthodox attitude towards politics and are increasingly emphasising political action for the benefit of the workers.

All over the world, trade unions are developing political wings and political links both for the purpose of securing reforms within the capitalist economic structure and for a fundamental reconstruction of the economic system by peaceful means, if possible, and by violence, if necessary. The links between the trade unions, on one side, and the guild socialists, syndicalists, socialists and communists on the other, are well-known. The State control and ownership of the means of production has all along been one of the important planks of trade unions in many countries.

There are unions which believe in the essentials of capitalism, free competition and free enterprise and seek to promote and protect workers' interests within this economic framework. There are others which think that, so long as the capitalist system survives, there is no permanent remedy to the workers' ills. They believe that the workers may secure temporary relief but the fundamental process of exploitation is an integral part of the capitalist economic order. However, such unions, even while working for the ultimate replacement of capitalism by a different economic order, do not neglect the day-to-day interests of the workers. They take part in everyday struggle, engage in collective bargaining, secure improve-

ments in working and living conditions of workers but, at the same time, realise the limitations of these short-term gains.

Some may rely on the use of their own economic power such as collective bargaining; others may rely on the power of the State to secure protection and favourable labour legislation.

Of the unions which have the ultimate goal of replacing the capitalist economic system, there are some which believe in the gradual transformation of the capitalist system and its ultimate replacement by securing political power through parliamentary methods, and others which believe in the overthrow of capitalism through general strikes and revolutions.

This classification is not unreal in view of the complex situations faced by different unions in different countries and is illustrated by the history of trade union movements in different countries. There have been and are unions which are extremely violent and have resorted to extra-legal methods to secure their goals. On the other hand, there are many others which attempt to secure workers' interests and rights through peaceful and non-violent means. There are unions which have at different times believed in capitalism, have grown skeptical of the efficacy of capitalism and have later on become openly hostile to it. The methods the trade unions adopt to achieve their objective of promoting the interests of their members, in particular, and the working class, in general, are conditioned, to some extent, by their attitude to the economic systems in which they operate.

### *Legitimacy of the methods*

The history of the trade union movement in different countries does not point out in an unequivocal manner the trade unions' methods and goals which may be called 'legitimate' and others, which may be said to be 'illegitimate'. There was a time when the trade unions in the U.S.A. distrusted the government and did not have any faith in labour legislation. At that time they sought to rely primarily on collective bargaining and building up their own economic strength. Today, the American trade unions are no less reliant on labour laws than on collective bargaining. Similarly, there was a time when involvement in politics was decried by leading trade unions and trade unionists. Today, the AFL-CIO is as much concerned with the political education of its members as with

strengthening the instrument of collective bargaining.

Again, the unions in the U.S.A. may primarily put their faith in collective bargaining, but trade unions in India, especially those affiliated to the INTUC, believe in compulsory adjudication and rely on their political strength. The trade unions of the syndicalist type believed in the efficacy of the weapon of general strike for overthrowing capitalism, whereas the trade unions under guild-socialism believed in replacing private ownership by workers' ownership of industries by peaceful methods.

Practically everywhere there are trade unions in existence today, which openly profess the replacement of capitalism by socialist order as one of their objectives. The aims and objectives of the AITUC include: the establishment of a socialist State in India and socialisation and nationalisation of the means of production, distribution and exchange, as far as possible. The methods of the AITUC include: legislation, education, propaganda, mass meetings, negotiations, demonstrations and in the last resort, strikes. Similarly, the aims and objects of the UTUC include: the establishment of a socialist society, the establishment of workers' and peasants' State in India and the nationalisation of the means of production, distribution and exchange.

Under this diversity of objectives and methods of trade unions, which ones can be said to be 'legitimate' and which others, 'illegitimate'? There is no objective standard by which one can judge the legitimate functions and methods of trade unions in general. Trade unionism is essentially a pragmatic movement which constantly reshapes its organisational structure, reformulates its policies and objectives and re-examines and evaluates its methods, keeping all the time in its view the welfare of the working class as its goal.

The particular goals and methods of trade unions generally are conditioned by the following factors:

- (1) the degree of group and class consciousness among workers;
- (2) the nature of political organisation of the particular society;
- (3) the nature of economic organisation of the society and its stage of economic development; and
- (4) the nature and type of trade union leadership.

## Trade Union Activities

The foregoing analysis of the generic trade union methods can be better understood if they are further analysed in terms of the specific activities in which they result. These activities may be summarised as follows:

### (1) *Economic activities*

Under this head come all those activities which result in the exercise of the economic pressure on the employer e.g. engaging in collective bargaining, demonstration, strike, boycott, picketing, etc.

### (2) *Political activities*

(a) Carrying on political education of the workers.

(b) Obtaining political power and influence through developing political parties of their own, and extending help to candidates of other political parties who are sympathetic to the cause of labour.

(c) Carrying on lobbying activities for influencing the course of labour and other legislation.

(d) Participating in, and representing the workers on, advisory institutions and bodies.

(e) Developing militancy and revolutionary urge amongst workers, etc.

### (3) *Social activities*

(a) Initiating and developing workers' education scheme.

(b) Organising welfare and recreational activities such as mutual insurance, providing monetary and other help during periods of strikes and economic distress.

(c) Running cooperatives.

(d) Providing housing facilities.

(e) Participating in community development and community protection activities.

### (4) *International activities*

(a) Participating in the organisation and activities of the ILO.

(b) Participating in the international federations of trade

unions such as the WFTU, the ICFTU and the International Trade Union Secretariats for the purpose of building working class unity and solidarity.

(c) Sending monetary and other help to workers of other countries during periods of strikes and natural disasters.

### Determinants of the Rate of Trade Union Growth

The analysis of the factors leading to the origin of trade unionism has emphasised such factors as : (a) the separation between ownership of capital and labour, (b) the emergence of the factory system and the economic distress and hardships resulting therefrom, increasing the workers' dissatisfaction with their working and living conditions, (c) the growth of group attitude and class sentiments among workers as a result of their congregation at particular places working in common groups and facing common problems, and (d) realisation of the fact of individual dispensability and collective indispensability of the workers to the employers.

These factors provide a general explanation of the origin of trade unionism, but there will be specific factors working in different countries which will assist in or delay the origin and growth of trade unions. That is why trade unionism has appeared at different times in different countries. Further, the rate of growth of trade unions has not been uniform everywhere or, over the course of time, in the same country. There have been periods in the history of every country when the number of trade unions and their membership have increased by leaps and bounds, whereas during other periods, they have fast declined and, still at other times, they have either remained stable or have recorded a very slow growth. How can one explain this rapid increase, relative stability and fast decline at frequent intervals? It is the task of this section to examine and evaluate the factors that condition the rate of union growth.)

Many American writers e.g. John T. Dunlop,<sup>21</sup> Joseph Shister,<sup>22</sup> Irving Bernstein,<sup>23</sup> and Julius Rezler<sup>24</sup> have sought to

21. John T. Dunlop, "The Development of Labor Organization" in Richard A. Lester and Joseph Shister (ed.) *Insight into Labor Issues*, pp. 163-196.

22. Joseph Shister, "The Logic of Union Growth", *Journal of Political Economy*.

23. Irving Bernstein, "The Growth of American Unions", *American Economic Review*, June 1954.

24. Julius Rezler, "Union Growth Reconsidered" (m/s).

analyse the factors determining the rate of trade union growth in the U.S.A., and on the basis of their study, they have tried to develop a general framework which may be applicable to the rate of trade union growth in other countries also.

A review of the relevant literature shows that the following factors constitute the important determinants of the rate of trade union growth:

- (1) Industrial commitment of labour force;
- (2) Changes in the composition of labour force;
- (3) Variations in the business activity;
- (4) Change in technology;
- (5) Trade union leadership;
- (6) Structure of union organisation;
- (7) Union security provisions in collective agreements and laws;
- (8) Attitude of employers toward unionism;
- (9) The political climate and legal framework;
- (10) Role of political parties;
- (11) The value system and public opinion; and
- (12) Proximity influence.

The factors noted above exert conflicting as well as complementary influences on the rate of union growth and unionisation. Besides, they may not have the same influence everywhere. For example, the role of political parties may be important in India and countries similarly situated, but not in the U.S.A. Likewise, variations in economic activities may tend to exercise an influence favourable to trade union growth, but the legal framework may operate in the opposite direction. Thus, union growth is the resultant of the operation of a number of diverse factors mentioned above, some of which may have an accelerating and others a retarding influence. It is the totality of these influences which ultimately determines the rate of union growth.

#### (1) *Industrial commitment of labour force*

The degree of unionisation and union growth is greatly influenced by the industrial commitment of the labour force. The crystallisation of the working class wholly dependent upon industrial employment and wages as the source of its livelihood and without any expectation of rising above the working class status is an important contributing factor. The Indian experience is typical

in this regard. So long as the individual workers in India maintained their connection with agriculture in the villages and continued to be migratory in character, the rate of unionisation was slow. Workers who look upon industrial employment as a temporary stop-gap arrangement will not create a fertile soil for the germination and growth of trade union ideas. Similarly, one of the important factors accounting for the slow growth of organisation among American workers during early years of industrialisation was the availability of abundant opportunities for individual advancement. During those days, many Americans looked upon their wage-earning status as a temporary event. They expected to become self-employed or even an employer by hard-work and saving habits. "In a period or in situations in which individual employees expect to become foremen and then owners of their own business, permanent and stable organisation is virtually impossible."<sup>25</sup>

### (2) *Changes in the composition of labour force*

This factor is closely related to the industrial commitment of the labour force discussed above. If the proportion of skilled workers in the total labour force increases, unionisation becomes easier. Experience has shown that the skilled workmen took to unionisation first. Similarly, if employment expands fast in industries susceptible to unionisation, the rate of union growth becomes faster. It is difficult to organise women and children. In a labour force in which women and children constitute a significant proportion, unionisation would be slow.

### (3) *Variations in the business activity*

History records that the number and membership of trade unions increase during cyclical upswings in business activity and fall during the downward swing. It is well-known that during periods of war also, when economic activities expand, employment increases, and cost of living rises while wages lag behind, there is a relatively greater swing toward unionisation. Here again, the Indian experience is relevant. It was the First World War that gave birth to unionisation and again trade unions recorded an unprecedented growth in membership during the Second World War. Thus, the membership

25. John T. Dunlop, "The Development of Labor Organization", *op. cit.*, p. 184.

of registered trade unions increased to approximately 9 lakhs in 1944-45 from nearly 4 lakhs recorded in 1938, whereas, during a corresponding period of seven years i.e. 1931 to 1938, the membership of registered trade unions had increased from 2 lakhs to about 4 lakhs only.

#### (4) *Change in technology*

Changes in technology imply changes in products, methods of production, skill and composition of labour force. As the technology advances, different sectors of economy become closely interdependent and quicker means of communication and transport develop. Further, technological changes may lead to disappearance of many traditional jobs; skills become obsolete creating both job and income insecurities. The need for developing and strengthening organisations becomes more urgent and pressing. Thus, periods of rapid technological change are also periods of rapid trade union growth.

#### (5) *Trade union leadership*

It is usual to describe economic and social forces as the sole determinants of union growth, but the character and nature of trade union leadership also has a powerful influencing role. No doubt, the economic and social factors create the necessary conditions for union growth, but it is for the leaders to exploit them. A militant and aggressive leadership wedded to the cause of labour may not only fully exploit the favourable factors but can also overcome conditions and impediments adverse to trade union growth. Leaders have the role of acting as the catalytic agent. The appearance of certain types of leaders lends a vigour to the union growth, which would have remained dormant, otherwise. The history of labour movement abounds in examples of such leaders who have moulded the course of labour movement to a very appreciable extent. Names of such leaders as Mahatma Gandhi, N.M. Joshi, S.A. Dange, V.V. Giri and a host of others are known to all students of trade unionism in India.

#### (6) *Structure of union organisation*

The structure of union organisation also influences trade union growth, though not in a decisive manner. Unions based upon crafts and skill generally are less interested in the organisation of the

mass of unskilled workers. So long as the craft structure of trade unionism exists, the pace of union growth cannot be accelerated. There may be leaders of trade unions who are more interested in the maintenance of the monopoly of power arising out of the compact and strategic nature of the craft and the skills they control. Particularly, with the advent of mass-production industries and the numerical predominance of semi-skilled labour force, craft as a base of unionisation may have a retarding influence. It is in this context that the role of industrial unions in accelerating the pace of union growth has to be visualised. The structure of the trade union movement has to adapt itself to the changing needs of the labour force, otherwise, it would become archaic and hamper the pace of growth.

(7) *Union security provisions in collective agreements and laws*

It has become customary these days for collective agreements to contain union security provisions for the closed shop, union shop, agency shop, and maintenance of membership shop etc.<sup>26</sup> It is the institutional interest of the unions that demands insertion of union security clauses having the effect of making union membership more or less compulsory on workmen. The workers become union members automatically without any additional efforts on the part of their unions. The more widespread such agreements are, the union membership is more likely to expand automatically along with the expansion of employment.

(8) *Attitude of employers toward unionism*

Since its very inception, trade unionism has faced stiff opposition from the employers. Everywhere in the past, the employers left no stone unturned to suppress trade unionism and punish the trade unionists. They utilised all legal and political avenues, economic pressures and administrative devices to prevent the growth of trade unions and the unionisation of their employees. Later on, the employers were forced to modify their stand and today they have come to tolerate trade unions. It is true that trade unions have grown in the face of this stiff opposition from the employers. However, if the employers become moderate in their opposition, the pace of unionisation is accelerated. Unionising the workmen is like climbing a hill; steeper the height, slower is the progress;

26. For details, see Chapter 2, pp. 52-53.

stiffer the employer's opposition, slower is the pace of unionisation.

(9) *The political climate and the legal framework*

The political climate and the legal framework of the country obtaining at a particular time exercise a decisive influence over the pattern and the rate of union growth. The hostile political atmosphere that the early trade unions had to face in all the capitalist countries is a story that need not be repeated here. It was this political climate and the adverse legal institutions that prevented the seeds of trade unions from taking roots in the early days of industrialisation. A dictatorship of the Fascist or the Nazi type generally seeks to eliminate trade unions and to subvert them. During the 1930's in Italy and Germany under Mussolini and Hitler, the trade unions were the first to receive the blows of their attack on democratic institutions. Where political climate is generally conservative and the employers' influence is much too predominant, circumstances are not at all propitious for the growth of trade unions.

On the contrary, a sympathetic political administration can do a lot to further the growth and the influence of trade unions. A review of the history of trade unions in Great Britain will show clearly the influence of political climate on the growth of trade unions. A Liberal or Labour Government, by its practices and policies, tended to help the trade unions, whereas, a Conservative administration had a restrictive influence. Similarly, the series of legislation enacted during the 1930's in the U.S.A. are an illustration of how a government can promote the growth of trade unions. With his sympathetic appreciation of the problems of the working class and the role of trade unions in the political and economic life of the community, Roosevelt initiated a number of legislative and administrative measures which gave a boost to the organising activities of the American trade unions. The National Industrial Recovery Act, 1933, the NIR codes worked out thereunder, and the National Labor Relations Act, 1935 (also known as the Wagner Act) helped the growth of trade unions by guaranteeing to workers the right of collective bargaining and preventing employers from interfering in any manner with the organisations of workers. A feeling that the government is supporting the organising efforts of the union dispels fear from amongst the workers and encourages them to organise. Similarly, in India, the establishment of a

national government after Independence created a favourable climate for the growth of trade unions and since then Indian trade unions have recorded a phenomenal growth both in terms of numbers and membership, and influence.

The state of political climate as discussed above is reflected in the legal framework obtaining at a particular time. It has been shown earlier how laws, codes and administrative practices of governments in almost every country mercilessly sought to suppress the trade unions in their formative years. Subsequently, however, laws favourable to workers guaranteeing them the right to organise, and declaring illegal antiunion practices of employers have been enacted in all democratic countries. The legal framework existing in India prior to the enactment of the Indian Trade Unions Act, 1926 definitely exercised a retarding influence on trade union growth. The contribution of the Indian Trade Unions Act, 1926 to the growth and spread of trade unionism in India, through the protection it afforded to the members and officers of registered trade unions, cannot be minimised. Thus, it is seen that the nature of the legal framework consisting of laws and court decisions can accelerate or retard the growth of trade unions.

#### (10) *Role of political parties*

Political parties, through their ideologies, contribute to the changing political climate and the legal framework. In order to maintain their influence and power, where power depends on the outcome of elections based upon universal adult franchise, some political parties tend to develop political programme and action sympathetic to labour and trade unions. Political parties have been founded with the specific goal of promoting the cause of labour. In many countries, labour, socialist and communist parties compete with each other in organising the workers into trade unions. With the advent of the communist parties in the field of politics, this competition has become all the more acute. The communist ideology believes that the working class constitutes the progressive and revolutionary section of the capitalist society. The communist parties, therefore, concentrate on the working class, organise the workers into trade unions and ceaselessly attempt to build the working class solidarity for the purpose of establishing a communist society.

In the colonial countries struggling for independence, the

political parties, in the vanguard of the struggle for freedom, seek to organise the workers for the purpose of enlisting their support and sympathy for the cause of national liberation. Thus, trade union movements under such conditions become a part of a broad national movement for political independence. It is this fact that accounts for both the speedy growth of trade unions and their domination by political parties in countries which have just attained independence or are struggling for the same.

In the industrially advanced countries of the world, though the early trade unions grew unaided by political parties, later on, either the trade unions founded their own political parties or others embraced the cause of labour and trade unionism. In these countries, trade unions and the progressive political parties have developed a system of mutual interdependence. But in the economically backward societies, the left-wing political parties will continue to play an effective and dominant role in the trade union growth. One may adversely look upon the injection of politics in the field of trade unionism by political parties, but one cannot overlook their contribution to the spread and growth of trade unions. The Indian experience typifies the role of political parties in accelerating the growth of trade unions.

#### (11) *The value system and public opinion*

In societies where the dominant value system puts a premium on individualism, or attributes the hardships and sufferings of life to supernatural forces or the ordains of God not changeable by the efforts of man, trade unionism faces an uphill task. It was this emphasis on individualism and individual competition that hampered the growth of trade unions in the early days of the newly emerging capitalist system in the countries of the west. The enemies of the trade union movement could easily quote passages from books on economics proving the futility of trade unions in raising wages or improving working conditions and also showing the harms done to the economic progress by trade unions. The dominant academic and intellectual circles wrote and argued against trade unionism and accordingly shaped public opinion.

In societies, such as the Indian, dominated by a hierarchical social system and authoritarian family pattern and firmly believing in the doctrine of *Karma*, starting protest movements against poverty, exploitation and economic inequality presents formidable

difficulties. So long as people believe that poverty and sufferings in the present life are the punishments for misdeeds of their previous birth and have, therefore, to be suffered, they would rarely raise a voice against the economic institutions that are really responsible for their troubles.

Trade unionism, being essentially a protest movement, teaches the workers to protest against the authority and tyranny of the employer. It takes a long time for the workers to be convinced that their sufferings are not the results of punishments inflicted by God, rather they are the man-made results of the working of economic forces, which can be moulded and controlled by conscious human efforts. In the early days of Indian industrial growth, it was difficult to induce the workers drawn from villages where *Zamindars*, landlords and the priestly class exercised and enjoyed complete control over the economic and social life, to think of challenging the might of the employers. Gradually, the mood changed. As democratic ideals spread and the traditional strongholds of authority and power vanish, a climate more favourable to unionisation will be created.

Apart from the role of this value system in retarding or helping the growth of trade unions, the prevailing public opinion, not necessarily related to the value system, also has an influencing role. If the prevailing public opinion takes unkindly to the activities of the trade unions, they will suffer in terms of their growth as well as their influence. Public opinion influences the policy and programme of governments, of political parties, as well as the outcome of particular strikes. That is why both the unions and the employers seek to mould the public opinion to their view-point. Trade unions have developed programmes of educating not only the members and other workers but also to educate the non-workers as regards the beneficial effects of trade unionism.

## (12) *Proximity influence*

Unionisation grows due to what may be called demonstration or proximity effects. News relating to gains secured by unions spread like a wild fire and workers in the plants and factories in close proximities are likely to be stirred and they may start organising and making similar demands. Developments in the means of communication of ideas accelerate this process. In larger cities, if organisations succeed in a big plant, even smaller plants are also

likely to follow suit. It is this proximity influence which operates as an important contributing factor in bigger cities. The spread of trade unionism from the manual to the white-collar workers is also partly the result of the demonstration effects.

The foregoing presents a summary of the factors that influence the pace of the growth of trade unionism under specific conditions. These determinants of trade union growth are to be distinguished from the basic economic and political factors that create the necessary conditions for the origin of the trade union movement. The basic economic and political conditions discussed in the beginning of this chapter and the determinants of the pace of growth taken together explain the origin and development of trade unionism.



## CHAPTER 2

# STRUCTURE AND GOVERNMENT OF TRADE UNIONS

### Bases of Organisation

Since trade unions are organisations of workers for the protection of their common interests, it is this community of interests that constitutes the base for the formation of trade unions. But there are many possible interpretations of the term 'common interests'. It is one thing to say that interests of all workers are common but, in reality, the consciousness about the community of interests may not be deep enough to be widely perceived. Workers, being in different stages of group and class consciousness, may have divergent interests and objectives as they perceive them to be. Because of this divergence, a variety of structural types of unions has emerged. Workers pursuing a particular craft may appreciate their common interests as being different from those of others and form a union of their own. Similarly, workers employed in a particular industry may realise that irrespective of their craft affiliations, their interests are common and may establish a union covering all the workers employed in that industry. On the other hand, workers working under a particular employer at a particular place may form a union of their own irrespective of the interests of other workers working in the same industry. Likewise, workers working and residing in a particular locality, irrespective of the craft, occupation or the industry in which they are employed, may develop common sentiments and form a general union covering workers employed in the particular locality. Thus, it is seen that there is a variety of bases for the formation of trade unions. Each

of these bases gives rise to a particular type of union e.g. a craft union, an industrial union, a general union etc.

A look at a factory or an industrial centre is necessary to clarify these concepts. The labour force of a cotton textile mill consists of weavers, spinners, doffers, cardingmen, dyers and bleachers, printers etc. The maintenance section of the same mill may employ fitters, turners, mechanics, electricians, carpenters etc. These different categories of workers may be said to belong to different crafts. Their levels of skill, training, apprenticeship as well as earnings are different. Hence, each craft has a personality of its own and its interests and needs may differ from those of others. If, in a cotton textile centre like Bombay or Ahmedabad, the weavers employed in different mills decide to come together to form a trade union, such a trade union is called a craft union. The spinners or doffers or other craftsmen may do likewise. If the weavers of Bombay also decide to bring in the weavers of other textile centres in the country, their union will be functioning at the national level and will become a national craft union. Other crafts can also develop their trade unions along similar lines.

On the other hand, if the entire labour force of a cotton textile mill decides to form a union and if its membership is open to all categories of workers employed in the mill, the union is called an industrial union. This could be true of any factory or industrial unit. If the boundaries of the union are further extended and membership is thrown open to all the textile workers of the country, we have a national union operating on the basis of an industry.

### *Craft unions*

A craft union is thus an organisation of wage-earners engaged in a single occupation. Such a craft union may cover all workers engaged in that craft, irrespective of the industries in which they are employed. Thus, electricians, though working in different industries, may form a union of electricians only. Sometimes, workers employed in allied crafts also come together and form a union which may also be called a craft union. It is the skilled workers requiring a long period of training and apprenticeship to develop their skill who are generally keen to form craft unions. (Historically speaking, it were the craft unions that lent stability to the trade union movement because of their relative stability in employment and higher

earnings. The International Wood Carvers' Association and the Indian Pilots' Guild may be cited as examples of craft unionism.

### *Industrial unions*

An industrial union is organised on the basis of an industry rather than a craft. The industrial union attempts to organise into one homogeneous organic group, all the workers—skilled, semi-skilled, unskilled, engaged in a particular industry.

### *General unions*

A general union is one whose membership may cover workers employed in many industries and crafts. The Jamshedpur Labour Union, whose membership includes workers engaged in different industries and crafts of Jamshedpur, is an example of a general union. Another example is the Transport and General Workers' Union which is one of the strongest trade unions of Great Britain. It requires a very high degree of consciousness among the workers merging their separate industrial and occupational status to form such unions.

### **Craft vs. Industrial Unions**

The foregoing discussions relating to the different bases of union formation indicate that the 'craft unions' have the narrowest and the 'general unions' the widest base. A study of the variety of structural forms of trade unions in different countries of the world will indicate that there are many variants of industrial and craft unions. Many of the unions in the U.S.A. are, in fact, *multiple craft* or *extended craft* unions. Similarly, many of the so-called industrial unions are organised on a quasi-industrial basis. Both industrial and craft unions have given rise to bitter jurisdictional disputes because of their divergent bases of organisation. Different unions, anxious to extend their scope of job-control, compete with each other in claiming jurisdiction over particular occupations and jobs. The emergence of new products and processes has deepened such conflicts.

It is essential to assess the points of strength and weaknesses of craft and industrial unions in order to form an intelligent opinion regarding their efficacy in the constantly shifting economic and political environment.

*Points of strength of craft unions*

When the trade union movement was in its infancy and still suffering from instability, the emergence of craft unions in the 1850's in Great Britain (New Model Unions) and in the 1890's in the U.S.A. provided a firmer basis for the stability of trade unionism. Crafts are compact groups; long training and apprenticeship develop cohesiveness in attitude, outlook and perception of problems. Thus, common sentiments develop automatically and organising craft workers becomes relatively easier. A well-knit association grows, zealously guarding the interests of the craft members. "The craft organisation may give the most stable relationship; it may give the best service in securing desirable jobs; it is most likely to provide needed training through apprenticeship and to control the supply of labour...."<sup>1</sup>

Besides, a craft union consisting of workers strategically located has a great striking power and, consequently, a strong bargaining position. Skilled workers cannot be easily replaced in a strike situation and a strike in a strategic craft such as a strike by crane drivers in a steel mill, may paralyse the entire working of the mill. Thus, craft workers come to enjoy a superior bargaining power and many economic and non-economic advantages e.g. higher wages, better status, and easier recognition. Job control by craft unions becomes simple. Craft unions may be in a position to secure much better terms and conditions of employment for their members than what is possible by the industrial unions. A labour aristocracy of skilled workers may arise enjoying a standard of living and status which are denied to other workers. Hence, craft unions are likely to be more effective from the point of view of the interests of skilled workers.

*Points of weakness of craft unions*

The main weakness of craft unions is that, in many cases, it is easier for an employer to break a small union of the craft type. When several occupational groups in an industry are independently organised and each has its own agreements, the employer has only to subdue and break one organisation at a time. Joint action, because of different agreements expiring at different times, may

1. Harry A. Millis and Royal E. Montgomery, *Economics of Labor*, Vol. III, *op. cit.*, p. 277.

become difficult and the employer may play one union against the other.

Another source of weakness of craft unions flows from the gradual extinction of craft distinctions. It is only in a relatively stable state of technology that crafts can acquire fixed demarcations. A rapidly advancing technology leads to the displacement of the traditional crafts. With vanishing and outmoded crafts, the very basis of a craft union disappears, especially in mass-production industries. That is why craft unions are very cautious and dogmatic in accepting technological changes. The need for maintaining their job opportunities may induce them to resist technological changes and to adopt unpopular and uneconomic devices such as feather-bedding.

From the point of view of the workers in general, craft unions have a divisive influence, leaving the bulk of unskilled workers out of the main stream of the trade union movement. The unskilled workers need the support and guidance of their more fortunate counterparts i.e. the skilled workers. If skilled workers become self-centred, labour ranks are divided, labour solidarity is undermined and the trade union movement in general is weakened. It is easier for the employers under such conditions to resist the workers' demands. It was this realisation that led the different craft unions working in the cotton textile mills of Ahmedabad to federate into what is known today as the TLA of Ahmedabad.

### *Points of strength of industrial unions*

The main importance and strength of industrial unionism lie in the fact that it cuts across skill and craft distinctions of workers employed in an industry and attempts to solidify them into one union. A single agreement with an employer or employers, with some modification to suit local needs as well as particular categories of workmen, covers all workers employed in a particular industry. It further leads to convenience in negotiations. Employers are also spared the trouble of bargaining separately with a number of unions established on a craft basis.

Besides, industrial unionism has a special appeal to the socialists and other radicals. With craft interests thrown somewhat in the background, industrial unionism makes for the solidarity of all categories of workers. Its organisation parallels that of the industry and, therefore, creates conditions under which demands for a new

economic order may be furthered. The guild socialists, in particular, with their philosophy of ownership of industries being vested in the workers employed therein, have been strong proponents of industrial unionism.

It is further pointed out that industry as a whole provides the only logical base for organising workers under the conditions created by automation and mass production. Under such conditions, when specialised crafts are being undermined and are being taken over by a mass of semi-skilled workers, the interests of skilled and unskilled workers are getting closer and closer. To cling to the craft form of organisation under present conditions means losing the battle. If unions continue to be formed on craft basis excluding the vast majority of semi-skilled and unskilled workers, the very foundation of the trade union movement is weakened.

### *Points of weakness of industrial unions*

On account of these ideological and practical considerations, industrial unions are growing faster and, in many cases, overtaking craft unions. Many craft unions, compelled by the logic of reality, have also merged together to form industrial unions. In spite of this upsurge of industrial unionism, one should not fail to take into account some of its practical weaknesses.

In general, when workers are considered as a mass, their long-term interests may be identical. But in everyday situation, when workers employed in an industry fall into different wage-groups and grades and occupy a hierarchical order, one cannot definitely assert that their interests are identical as they perceive them to be. Workers tend to stick to their relative wage differentials. Negotiating a single agreement covering all of them and containing multiple wage rates is a difficult process. It is the general experience that industrial unionism has resulted in narrowing of wage-differentials based on skill, undermining the relative economic position of skilled workers. It is logical and natural for skilled workers not to feel at home in an industrial union where the majority may consist of unskilled and semi-skilled workers. Only to a limited extent, industrial unionism succeeds in maintaining a facade of unity hiding conflicting economic interests and struggling all the time to reconcile them.

The experience of trade unionism on the Indian railways provides the difficulties and problems of skilled workers working within the framework of industrial unionism. The two mass organisa-

tions of railwaymen in India are the All-India Railwaymen's Federation and the National Federation of Indian Railwaymen. The membership of these two federations is open to all railway workmen, irrespective of their skill, craft or status. It is well-known that the vast majority of railwaymen in India consists of unskilled workers. The two federations particularly the AIRF have secured significant gains for the railwaymen. But many categories of skilled workers have developed a sense of grievance against the federations. The skilled workers feel that they have been swamped by the unskilled workers in the federations and that the federations have not been able to meet their specific needs and protect their interests. The result is that about eighty categories of workers have come to form their separate unions and are struggling for recognition. It appears as if what was once an effective industrial union will be split into numerous craft unions.

This controversy as regards the relative effectiveness of craft unionism and industrial unionism is still unsettled. The resistance on the part of AFL, long dominated by the craft unions, to the emergence and establishment of industrial unions in the mass-production industries led to a split in the AFL and the establishment of the CIO during the early 1930's. It took more than 20 years for the two federations to reconcile their basic differences in the approach and policy to merge together once again and be known as AFL-CIO.

In Great Britain, after 1880, there was a great wave of organising the unskilled workers long neglected by the craft unions. Since then, many industrial unions have been formed there. However, the British Trades Union Congress had the wisdom to accommodate the newly emerging industrial unions and avoid a split, which the AFL could not do in the U.S.A.

A study of the history of the Indian trade union movement will show that, unlike Great Britain and the U.S.A., India began with industrial unions, craft unions being only exceptions. The trade union movement in India may be said to be travelling today from industrial unionism to craft unionism, whereas in Great Britain and the U.S.A., it took the road from craft unionism to industrial unionism.

## Trade Union Federations

Irrespective of the bases of their organisation, trade unions have experienced the need for a united front in their day-to-day tasks and struggles. Trade unions have found that many of their problems cannot be tackled either on a craft or industry or employment basis. The forces of competition in the labour as well as the product market and the need for influencing the policy of the State have necessitated a closer association of trade unions operating in different areas and industries. The developments in the means of transport and communication, on the other hand, have made such closer associations possible.

The widening of the labour and the product markets on account of quicker means of transport and communication has made wages and other conditions of employment in one factory or in one industry or in one place dependent upon terms and conditions prevailing elsewhere. In most cases, the efforts of a union to secure higher wages and better conditions of employment in a factory or an industry are thwarted because of lower wages prevailing elsewhere or because of the influx of workers from other labour markets. Thus, the best way to prevent employers from competing with each other in lowering labour standards is to take labour cost out of competition. When terms and conditions of employment can be standardised over the entire area of the labour and the product markets, employers can be prevented from competitive wage-cutting and lowering conditions of employment. This standardisation can be secured only when the range of trade unionism becomes coextensive with the range of the product and the labour markets. For this purpose, different unions have to cooperate and have to increase their size either by amalgamations or by establishing federations.

In the political field also, the unions can effectively pressurise governments to adopt favourable labour laws and progressive measures only when they function at a national level and in a united manner. Historically and administratively, it may be necessary for the unions to maintain their separate identities but politically, it is essential for them to coordinate their activities.

Growing internationalism, the interdependence of conditions of employment in different countries, international trade, and ideological considerations further demand that national trade union

centres should maintain international cooperation among them, and if possible, coordinate their policies and activities.

The factors mentioned above have led to the establishment of large unions and formation of trade union federations at the industry, national and international levels. The number of such federations is increasing everyday. The All-India Trade Union Congress, the Indian National Trade Union Congress, the Hind Mazdoor Sabha, the United Trades Union Congress, and the Centre of Indian Trade Unions are the leading national centres; the All-India Railwaymen's Federation, the Indian National Mine Workers' Federation and the Indian National Defence Workers' Federation are some of the important industrial federations operating in India. In Great Britain, the British Trades Union Congress and in the U.S.A., the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) are the national centres of trade unions. At the international level, the World Federation of Trade Unions and the International Confederation of Free Trade Unions are the two important organisations in existence.

The formation and working of these federations raise a number of important issues such as the relationship between the federating units and the federation, local autonomy vs. centralised control, financing and representation. A study of the working of different federations whether industrial, national or international, indicates that generally speaking, the federations are very loose associations and the federating units possess the real power and enjoy a large measure of autonomy everywhere. The federations may provide some guidance and formulate policies at a higher level, but the implementation of such policies is done by the local units. As the latter are in close touch with the rank-and-the-file of workers and as they are the main sources of providing finance to the federations, they enjoy more power and influence. However, where the federations plan and organise new unions, their control and power become more predominant over the new unions.

### **Problems of Government and Administration**

The typical administrative set up of a union consists of a general council, a working committee, and such important office-bearers as a President, Vice-President, a General Secretary, and one or more Assistant Secretaries and a Treasurer. The general council

formulates the general policy and keeps a control over the working committee and the office-bearers. It consists of the representatives elected by the members of the union and may meet once a year or even less frequently. The working committee is elected by the general council at its annual or biennial meeting as provided for in the constitution. The working committee implements the policies as laid down by the general council and is in charge of the day-to-day administration of the affairs of the union. The office-bearers, as mentioned earlier, are elected by the general council. These, in brief, are the general features of the administrative organisation of a union. This administrative structure applies to unions, whether local, regional, industrial or national and is equally applicable to federations also.

However, the foregoing brief summary presenting some of the common elements in the administrative structure of unions, particularly the Indian trade unions, cannot cover the bewildering variety of administrative structure and forms of government that have evolved under diverse conditions prevailing in different countries and still more diverse conditions existing in different industries and localities in the same country. Furthermore, the administrative structures have evolved over a course of time when the policies, programmes and activities of unions have been undergoing rapid changes. Besides, unions vary in size—from unions having only a few members to unions having lakhs of members. As a result, the administrative structures present a picture of enormous variety and problems of administration have become complex.

### *Problems of administration in the early days*

There was a time when trade unions functioned as secret societies constantly under the threats of the laws of conspiracy and victimisation from the employers. A few members assembled together, formed a union, elected a leader and anonymously presented their charter of demands, perhaps, with no formal constitution, no prescribed membership fees and no administrative structure. Contacts amongst the members were direct; communication of ideas was mostly oral; and a form of direct democracy like that in the Greek City States prevailed. The activities of the unions were few, consisting primarily of unilaterally laying down the terms and conditions of employment and, when confronted with opposition by the employer, withdrawing their labour from employment and

indulging in violent activities like smashing of machines and physical intimidation of employers: Tasks were hard, but the union administration was simple.

### *Present administrative structure*

Gradually, the scene changed and the unions secured legal legitimacy and recognition from the employers. The size of the unions began to increase in keeping with the expanding labour force, emergence of large-scale industries, giant joint-stock companies and big corporations and expansion in the labour and product markets. Bigness on the side of capital was sought to be matched by bigness on the part of labour. Union activities expanded; branch administration came into being; membership fees from a large number of members had to be collected; large funds had to be administered; long-drawn disputes concerning the whole industry had to be conducted; journals came to be published; research activities had to be developed; collective bargaining became sophisticated; and a hierarchy of administrative structure emerged. With membership scattered over wide areas and headquarters located at one place, contacts of members with leaders at the headquarters became remote and indirect, and an administrative bureaucracy took shape. Formal and written constitutions, rules for meetings, methods of election, functions and powers of different bodies in the hierarchy and different functionaries, rights and duties of individual members, expenditure, investment and control of funds etc. became common. Thus, bigness inevitably brought in its train a variety of complex administrative problems, and governing big unions became a difficult task.

Trade unions, as voluntary organisations, have evolved their own administrative structures and rules of business without any serious control and intervention by the State. The administrative structure of a union, as any other administrative structure, is a means to achieve the goals of the organisation. Therefore, when the goals and the tactics and methods to achieve them change, administrative structure has also to adapt itself to the changing conditions. Trade unions have been doing that. In big unions that administrative structures "have been created along the line of the type that has been so successful in modern industry; and

which is particularly suited for large-scale administrations—the monolithic bureaucratic type.”<sup>2</sup>

### *Democracy vs. efficiency*

In trade unions, where the members are free to come in and go out, the monolithic bureaucratic type of administrative structure has a dual role to play: (a) it has to be efficient in facilitating the attainment of the goals for which the union exists; and (b) it has to secure willing and voluntary cooperation of the members and to provide for their democratic participation in the affairs of the union. How to reconcile efficiency with democracy in case of a conflict between the two is one of the most important problems facing the big trade unions in their administrative structure and government today. In the words of V.L. Allen, “the problem . . . is the fundamental one of combining popular control in trade unions with administrative efficiency.”<sup>3</sup>

Trade unions are essentially fighting organisations—fighting for what the members desire i.e. wage increase, reduction in working hours and improvement in working conditions. Workers continue their membership so long as they feel that the trade unions are successful in securing these gains. But it is only through the voluntary participation of the members in the activities of the union that the desires of the members can both be reflected in the policies and programmes of the union and effectively translated into achievements. The administrative structure of a union has to be such as to constantly reflect the wishes of the members in the policy making bodies and the implementation machinery i.e. the top leaders in the hierarchy. On the other hand, the top leaders must have sufficient authority to keep the members under control and discipline, while at the same time, being controlled and disciplined by them, so as to combine fighting efficiency with democracy. As a fighting organisation, the trade union resembles an army, but unlike the trade union members, the fighting soldiers are not expected to have any disciplinary control over the commanders nor do the soldiers decide the goals for which the army fights. On the contrary, the members are the soldiers of the trade unions; it is the members who decide the goals for which the trade union will

2. V. L. Allen, *Power in Trade Unions*, p. 60.

3. *Ibid.*, p. 67.

fight. Under such conditions, it is likely that fighting efficiency and democratic participation may not always go together.

In the case of small unions, control over leaders by rank-and-file or vice versa is possible and efficiency and democratic control can go hand in hand. But in the case of big unions, where bureaucratic administrative structure emerges, popular control of the policy making bodies becomes remote and difficult. Studies made in the administration and government of the American and British trade unions have revealed a general apathy and indifference on the part of the ordinary membership in the matters of attending union meetings and participation in union activities, other than strikes. In Great Britain, "branch attendances in the large unions vary a great deal, though the averages appear to fall within a range of from 3 to 15 per cent, with a concentration in between 4 and 7 per cent in the majority of cases."<sup>4</sup> Similarly, in the U.S.A., "a serious problem facing many locals especially large and medium-size locals, in which normal attendance usually runs from one to eight per cent—is the small number of members who come out to the meetings."<sup>5</sup> Not only this, even the constitutional provisions for the democratic control of various organs and authorities of union administration are in many cases imperfect and the centralised powers in the hands of the higher echelons in the administrative hierarchy are much too strong to be controlled by the rank-and-file. These constitutional provisions making for the centralised control date back to the early days when the mere survival needs of the union in a very hostile economic and political climate demanded that strict discipline be maintained and unquestioned adherence be shown to the leaders.

Further, with the growth of sophisticated bargaining procedures and industry and craft-wide bargaining at the national level, the ordinary membership has been far removed both from the centre where decisions are made and the machinery which makes them. The expert knowledge, skill and technique that are required for conducting bargaining negotiations are also beyond the power and comprehension of ordinary members. The result of all this has been that union power has tended to be concentrated at the

4. B.C. Roberts, *Trade Union Government and Administration in Great Britain*, p. 95.

5. Clyde E. Dankert, *An Introduction to Labor*, p. 209.

top and, when persons skilful in the art of manipulating electoral machinery and conversant with the use of high-handed methods come to the position of supreme power, they can rarely be dislodged. Investigations into the working of many American unions have revealed the continuance in power for decades of such persons who have been relying for continuing in power primarily on political manipulation and racketeering, with membership groaning, futilely fuming and fretting. The existence of such undemocratic leadership has cast a dark shadow on the trade unions as a whole, which, though fighting for political democracy in the political field and industrial democracy in the industrial field, themselves violate the basic principles of democracy and function in a dictatorial manner.

Nevertheless it has to be remembered that in spite of the absence of democratic control over the administrative organs in these unions, they have not been less efficient in satisfying the needs of the members for higher wages, shorter hours and better working conditions. The general apathy of the members or the absence of democratic control has not prevented the unions from securing gains for their members and successfully fighting the employers, when fighting becomes imperative.

### *Trade unions as service organisations*

With the trade unions established on a secure foundation, enjoying legal and political support and their institutional survival no longer in danger, the membership may look upon them as service organisations supplying certain types of services for a price. The members become mere consumers of a service and the membership fee and occasional donations are the price to be paid. A consumer of electricity is not so much concerned with the manner in which electricity is to be produced or with the people who run the company producing the electricity as with its regular supply and the price. Similarly, a member of a trade union is primarily concerned with the gains which the trade union secures to him and the price he has to pay in terms of his membership fees. Who runs the union? Who are the leaders? Do they function in a democratic manner? Are the policies and programmes formulated in a democratic way? Does the member have a say in the formulation of the policy? These questions do not worry him so long as

the union succeeds in bringing gains to him periodically, and the membership fee is not too high. In such a situation, the strength of the union does not depend so much on the active participation of the members in union activities as on the number of members. The numerical strength of membership becomes more important than the quality of membership. A member, dissatisfied either with the price of the service or its quality, can quit the union and join another if he so likes. The falling membership thereby becomes an index of the union's inefficiency, warns the union officials of the prevailing mood of the rank-and-file and serves as a stimulant to the leaders of the union for vigorous action to retain and expand union membership.

However, this voluntary nature of union-member relationship has ceased to operate in many industries and employments in the U.S.A., Great Britain and many other countries. In many situations workers are no longer free to join or not to join a union of their choice and have compulsorily to belong to a union, otherwise, they lose their jobs. This brings us to the controversial question of compulsory unionism.

### Compulsory Unionism

In order to be effective, a trade union should be able to control the supply of labour to the employer. In the event of a strike, if the union is not able to withdraw the entire labour force and the employer can operate his business with the help of non-union workers, the strike would fail; hence the union seeks to bring under its disciplinary control the entire labour force of the employer. One way of doing this is preventing the employment of non-union workers. The union may, therefore, insist on the employer to agree to employ only union members and to discharge from service those workers who cease to be union members. Membership, thus, becomes a precondition both for securing employment and retaining it.

The opposite was the case in the early days of the emergence of trade unionism. When the employers, law and courts were hostile to the trade unions, many employers demanded and also succeeded in securing agreement from the workman that he would not join a union during the course of his employment and, if he did so, the employer would be free to terminate his services. Such

a contract between the employer and workman was extensively used as an antiunion device and was termed "yellow dog contract" by trade unionists. Under this contract, non-membership of a union was a precondition for securing job and retaining it. The hostile employers sought to deprive the unions of membership by such a device, and many workers, though sympathetic to unionism, had to sign such a contract under duress. Gradually, with changes in law which recognised the right of a workman to join a union, this practice fell into disuse. The courts ruled it out and the unions were also able to fight such openly hostile employers.

The pendulum has now swung to the other extreme. Many unions have now succeeded in securing agreements from the employers that membership of the unions concerned be a necessary condition for any worker to continue in employment. Though there are many variations, the primary purpose of such agreements is to secure cent per cent membership in a particular business enterprise, and such enterprises have been designated by various names depending on the type of the agreement e.g. *closed shop*, *union shop* and *maintenance of membership shop* etc.

### *Closed shop*

A '*closed shop*' is that business enterprise which has an agreement with the union that a worker must be the member of the union at the time of his employment and continue to do so in order to retain his job. Sometimes, such an enterprise is also called a '*pre-entry closed shop*'. In short, a '*closed shop*' means a shop closed to non-unionists for the purpose of employment. A collective agreement by which '*closed shop*' is established is called a '*closed shop agreement*'.

Under such an agreement, the employer's freedom to recruit his labour is limited and he can recruit only those persons who are members of the union. As soon as the worker ceases to be a member of the union, his services are terminated. The worker's freedom to join a union or not to join it is similarly restricted. In the same way, his freedom to choose his employer or place of work is also curtailed. In such a case, a union is no longer a voluntary organisation and unionism becomes compulsory.

### *Union shop*

A '*union shop*' is that business enterprise which has entered

into an agreement with the union that a worker would become a member of the union within a specified period of his securing employment in that enterprise and that he would continue his membership in order to retain his job. Under a union shop, the employer is free to recruit his workmen, but the workmen so recruited have to join the union immediately after their employment. If a worker ceases to be a member of the union at any time during his employment, the employer is obligated under the agreement to discharge him from his job. A union shop is less restrictive of the employer's freedom than a closed shop.

#### *Maintenance of membership shop*

A '*maintenance of membership shop*' is that place of employment where an agreement between the employer and the trade union provides that "all employees who are members of the union on a specified date or who become members after that date are obligated, as a condition of employment, to maintain a good standing in the union for the term of the agreement."<sup>6</sup> Under such an agreement, the employer is permitted to hire persons without regard to membership or non-membership of the union, but if a worker once joins the union, he cannot withdraw his membership and also hold his job. Similarly, the persons, who are members of the union at the time such an agreement is signed, are allowed a certain period in which to resign. If they do not resign, they have to keep up their membership in order to keep their jobs. This sort of agreement allows the workers the choice to be union members, but once they choose to do so, they cannot change their minds and withdraw from the union without losing their jobs. This was a particular feature of many collective agreements in the U.S.A. during the Second World War. It was a compromise between the unions' demands for a 'closed shop' and the employers' insistence on an 'open shop'.

#### *Union security clauses*

The intention of the agreements noted above is to secure and strengthen the institutional position of the unions and, therefore, the clauses in collective agreements providing for either the closed shop, union shop or maintenance of membership shop or any other

6. George W. Taylor, *Government Regulation of Industrial Relations*, p. 124.

variation requiring union membership as a condition for continuing in employment are known as union security clauses.

It is clear from what has been said above that the requirement of union membership as a condition of employment is a form of compulsory unionism and has raised bitter controversies and caused anguish in the minds of many liberals. Apart from opposition from employers, who would prefer the open shop in most cases, even governments sympathetic to labour have had misgivings about the desirability of compulsory unionism. At the same time, there have been equally strong advocates of compulsory unionism not only amongst the trade unionists but outside their ranks also. It is pertinent, therefore, to summarise the arguments for and against compulsory unionism.

#### *Arguments for compulsory unionism*

It is said that, in the absence of compulsory unionism, many workers may choose and do choose to keep away from the union, though at the same time, they continue to enjoy all the improvements that unionism secures in the terms and conditions of employment. Membership of a union is a risky venture, particularly when the employer is hostile. Membership costs in terms of money and active participation in union activities means expenditure of time and energy. The non-unionist escapes the risks and the costs and still continues to enjoy the benefits of the trade union action. He reaps a harvest that he never sowed. This is neither fair nor moral on the part of the non-unionist and, therefore, fairness demands that all those who benefit from trade union activities should also run the risk inherent in it and bear the cost which union action entails. Compulsory unionism ensures this fairness.

Secondly, compulsory unionism lowers the cost of organising by reducing membership turnover and maintains union income at a high and steady level. As membership becomes automatic with the workers' entry into employment, membership dues are regularly deducted from the workers' pay-packets and deposited into union's treasury. The union organisers are saved from worrying about membership and membership dues, and persuading workers to become union members.

Thirdly, compulsory unionism permits the union leaders to give more time to considering the problems of internal union organisation and giving good services to union members by releas-

ing their energies from the task of maintaining and increasing union membership.

Fourthly, compulsory unionism also contributes towards better regulation of industrial relations since it eliminates a potent cause of unrest when some workers remain outside the union and tend to form a rival union. Management is also not caught in the crossfire of jurisdictional disputes; responsibility is more clearly pinned upon the union; and greater cooperation can be expected. Industrial relations are also put on a better foundation when the union is in a position to honour its commitments by enforcing discipline amongst recalcitrant members without running the danger of losing union membership. The employer is also confident in his dealings with the union when he knows that he is dealing with an organisation which does represent all employees.

Fifthly, in some industries, it is impossible or difficult for a union to establish an effective and stable organisation without the help of a closed shop. Such industries are characterised by a high degree of labour turnover, the absence of a stable labour force and the prevalence of a large-scale casual employment. Workers come in and go out at will. In the absence of a closed shop, unions would be hard put to organising such workers.

Sixthly, even where membership can be recruited and retained without compulsory membership, there are instances where it is needed to deploy the workers' bargaining strength to the full. This is particularly needed when, in times of strikes, some members are reluctant to participate and the union, for various reasons, is unable to discipline them.

Lastly, union membership is like obtaining membership of a community in an industrial set up. If the majority of workers in a particular business unit belong to a union and demand that others also do so, it is so because the union members feel that a worker, by accepting employment at a particular place, has become a member of that community and should abide by the codes of conduct and standards of behaviour of that community. Union membership is one such element in the community's code of behaviour.

### *Arguments against compulsory unionism*

The arguments against compulsory membership centre primarily round its impact on the freedom of the individual worker and

the likely effect of compulsory membership on the internal working of the union.

Firstly, it is argued that compulsory membership of a union is an infringement of the right of the individual worker to work with any employer if the employer so accepts him. If, for any reasons, a worker does not like to join the union, should he be deprived of his job and his only source of livelihood? This is a big question regarding the individual's freedom and liberty. Compulsory unionism does not only destroy the individual worker's freedom to choose his employer and his occupation but also his freedom to be critical of either the union's policy or leadership. The union may expel him from its membership and he loses his job; the union may not enrol him as a member and he cannot get a job for which he is best suited. The refusal of membership and expulsion from membership may be arbitrary; the union is answerable to none as it is free to lay down the terms and conditions for union membership. He may not like the policies and political ideology of the union; he may feel that union leadership is undemocratic and unresponsive to the workers' urges; and still he has to continue his membership, otherwise, he faces starvation. This is a severe restriction on the freedom of an individual workman in a liberal and democratic society.

Propelled by such arguments and also by a desire to curb the union's power, the Labour Management Relations Act, 1947 of the U.S.A. outlawed closed shop agreements. Following this example of the U.S. Congress, many of the States in the U.S.A. have passed legislations outlawing such agreements. The anti-union employers euphemistically call these anti-closed shop laws 'right to work' laws, and the unions derisively call them 'right to bust union' laws. The employers emphasise that these laws are intended to protect individual workman's freedom and right to choose his job and his employer without being hindered by the requirements of compulsory unionism. On the other hand, the unions insist that such laws are intended to weaken the union by encouraging the workmen to defy and keep away from it so that the employers can continue their anti-union pursuits.

Secondly, it is argued that compulsory membership would swell the ranks of the union with mere card-holders who may not show that loyalty and devotion to the union activity which are so very essential for its cohesion and effective working. Where the vol-

untary principle of union enrolment is no longer operative and there is no necessity to persuade workers to become trade unionists, the incentive to make them conscious of their responsibilities may be weakened. Under compulsory unionism contacts between trade union leaders and organisers, on the one side, and the rank-and-file, on the other, would tend to be few and far between.

Thirdly, compulsory membership may sow the seeds of decay of union democracy. Dissent and criticism are suppressed and corruption may also come in. Assured of stable membership, the efficiency of the union may go down, and the quality of services provided by the union may also deteriorate. The most effective check on the union's efficiency is the danger of losing union membership and the likely emergence of a rival union. With the disappearance of this check, the union would tend to decay and stagnate.

Lastly, the trade unions with closed shop agreements may restrict the membership and thereby diminish the supply of labour, particularly in the skilled trades. This will be damaging to the economy.

This summarisation of the pros and cons of compulsory trade unionism shows that much can be said on both sides. Therefore, efforts are being made for a compromise which can protect the union's position from the recalcitrant and obstructionist non-trade unionists and at the same time also protect the freedom of the individual workman to secure and retain employment without being required to join the union. One such effort has been made by the Industrial Relations Act, 1971 of Great Britain.

### *'Agency shop' and 'approved closed shop' in Great Britain*

The British Industrial Relations Act, 1971 provides for the existence and maintenance of what is called 'agency shop' and 'approved closed shop'.<sup>7</sup>

*Agency shop.* According to section 11 of the Act, a union and an employer may come to an agreement laying down that membership of the union is a part of the terms and conditions of employment and a worker, who objects to joining the union, will have to agree to pay appropriate contributions to the union in lieu of membership or agree to pay equivalent contributions to a charity

7. For details, see Chapter 19.

The idea behind the agency shop is that a worker should not be deprived of his job if he objects to joining a union, but at the same time, he should not be able to escape the money cost that his membership of the union would have involved.

*Approved closed shop.* The requirements of the approved closed shop agreements are the same as those of the agency shop, except in that a worker, if he objects to becoming a member of the union, has to secure exemption by applying to the union. The union has the right to exempt or not to exempt him. If he is not exempted, he cannot refuse to be a member of the union. If exempted, he can refuse the membership of the union by agreeing to pay appropriate contributions to a charity.

The Act confers upon the workmen the right to be a member of a trade union or to keep away from it altogether. This right, however, will be available to him in absolute only where neither the agency shop nor the approved closed shop prevails. The obligations of a workman under the agency shop and approved closed shop are a modification of this right.

In 1947, the Labour Management Relations Act outlawed closed shop agreements in the U.S.A.; in 1971, the British Industrial Relations Act accorded an official seal to such agreements. The problem of compulsory unionism has not yet cropped up in India. The Indian trade unions are not in a position to demand a closed shop because of their division along political lines, but as unionisation spreads, the pressure for closed shop agreements might start mounting. The National Commission on Labour, after considering the pros and cons of compulsory unionism, came to the conclusion, "The practice of closed shop . . . is neither practicable nor desirable."<sup>8</sup> As regards union shop, the Commission was favourably disposed, but found that it also contained an element of compulsion. In any case, the Commission desired that union-security clauses should be allowed to evolve voluntarily on the basis of mutual negotiations and discussions rather than be introduced by law in this country.

8. Government of India, *Report of the National Commission on Labour*, 1969, p. 293.

## CHAPTER 3

# TRADE UNION MOVEMENT IN GREAT BRITAIN

### Early Years

The main features of the British trade union movement prior to 1830 were: (a) the creation of sporadic, spontaneous, loose organisations following the emergence of the factory system, especially in the textile industry; (b) suppression of these organisations by the State by declaring them illegal, mass arrests and severe punishment of trade unionists; and (c) revolts, breaking of machines and violence by the working class.

As the industrial revolution advanced, new types of industries grew and an industrial working class recruited from the dispossessed peasantry started taking shape. The new class of workers started forming new types of working class organisations in the textile and mining industries in the north of England—different from the earlier guilds and clubs. The ruling classes, unnerved by the French Revolution and anxious to preserve their political power, did all they could to suppress the rise of the new organisations. The judges tended increasingly to regard all workers' combinations as criminal conspiracies under the Common Law,<sup>1</sup> and the two Combination Acts of 1799 and 1800<sup>2</sup> specifically declared all forms of trade unionism illegal and repression was let loose. G.D.H. Cole remarks:

Overawed by military force, ceaselessly spied and reported upon by the agents of the government or the local magistrates, liable to serve sentences for conspiracy under Common Law or for the violation of the Combination Acts, if they attempted any

1. For details, see Chapter 17.

2. For details, see Chapter 17.

concerted action, it is not surprising that for a long time the factory workers and miners failed to create any stable combinations. It is more surprising that they managed to combine at all.<sup>3</sup>

However, in spite of these repressive measures, a few trade unions continued to function, frequently by converting themselves into friendly societies or social clubs, often by going underground, occasionally by openly defying the laws, sometimes by directing their anger against the machines competing with human labour and at others by taking the form of the Luddite Movement.<sup>4</sup> Strikes continued to take place and trade unionism grew apace despite the Combination Acts. "The working class movement began to take shape in a great outburst of activities under the leadership of political reformers."<sup>5</sup>

It has been said that the five years from 1815 to 1820 were a season of blind, desperate reactions to the intolerable distress and the decade from 1820 to 1830 was the seeding time of working class ideas and organisations. The Act of 1824 repealed the earlier Combination Acts and legalised combinations, but the Act of 1825 imposed such severe limitations on the functioning of trade unions as to make it very difficult for them to take effective actions without incurring legal penalties.<sup>6</sup> However, trade unions continued to grow and function openly. The Steam Engine Makers' Society and the London Shipwrights Association of 1824, the Northumberland and Durham Colliers' Union of 1825, the Journeymen Steam Engine Makers of 1826 and the Friendly Society of Carpenters and Joiners of 1827 are a few of the trade unions that were established or re-constituted after the repeal of the early Combination Acts.

3. G.D.H. Cole, *A Short History of the British Working Class Movement*, p. 41.

4. The Luddite Movement, which began in 1811 among the Framework-Knitters, was a movement of machine-breaking. The movement was an organised affair, skilfully directed by leaders who, working in secrecy, successfully instigated manual workers to destroy textile machinery and sometimes to wreck factories. A number of machine-breakers were sentenced to transportation for the offence, but the employers were ultimately compelled by the movement to raise wages and to concede to some of their other demands.

5. G.D.H. Cole, *op. cit.*, p. 41.

6. See Chapter 17.

## The Period 1830-1849

### *Trades unionism Vs. Trade unionism*

During the 1830's, the British trade unions came under the general influence of middle class leadership, became closely associated with the Reform and the Chartist Movements and were dominated by the magnetic personality of Robert Owen—a great visionary and philanthrope. The Webbs have called the period between 1829 and 1842, the Revolutionary Period.<sup>7</sup> The main contribution of this period to the growth of trade unionism in England lies in the attempts at creating 'One Big Union' to include all workers—skilled and unskilled engaged in all trades as distinct from the individual trade clubs and trade societies which were mostly confined to particular localities. Such a union which sought to include all workers engaged in all trades went by the name of the 'trades union' different from the 'trade union' which was a combination of members of only one trade. In 1830, the National Association for the Protection of Labour consisting of delegates from more than thirty trades was established with the patronage of Robert Owen; the National Association was replaced by the Grand National Consolidated Trades Union, 1834 as representing a General Union of productive classes. Under the inspiration of the Grand National, a "positive mania for Trade Unionism set in",<sup>8</sup> and a number of strikes by the gas stokers of London, the tailors, and the builders took place, almost all ending in failure. What with the unmanageable and premature aims of establishing a new social order, what with the repressive measures of the government and what with the failures in the battle fields of strikes, the Grand National collapsed before it could celebrate its first birth anniversary. It had a meteoric rise and fall.

The rise and fall of this unionism of 1830-34 i.e the 'trades unionism' led the Webbs to comment on the gap between the ideas and tactics of the workers prevailing at the time. In this regard, they said:

In Council they are idealists, dreaming a new heaven and a new earth; humanitarians, educationalists, socialists, moralists; in battle they are still the struggling, half emancipated serf of

7. Sidney and Beatrice Webbs, *The History of Trade Unionism*, p. 113.

8. *Ibid.*, p. 135.

1825, armed only with the rude weapon of strike and boycott—sometimes feared and hated by the propertied classes; sometimes merely despised; always oppressed, and miserably poor.<sup>9</sup>

Meanwhile, the working class closely associated itself with the Reform Movement which ultimately led to the enactment of the Reform Act of 1832. It has been said that the Reform Act was carried chiefly by the workers' agitation, and by the threat of revolution in which they would have played a leading part.<sup>10</sup> The Reform Act, however, left the workers voteless, angry and disillusioned; they could win the battle but got none of the fruits of victory.

The ideas of Robert Owen, who fully realised the dangers of unbridled competition to the workers' standard of living, took hold of the working class for a while and gave birth to the workers' cooperative movement. Robert Owen attempted to control the evils of the rising capitalism through industrial democracy but here too, the Owenite ideas could not maintain their spell for long and further disillusionment set in.

### *The Chartist Movement*

Similarly, the workers whole-heartedly threw their time and energy in the Chartist Movement, which was essentially an economic movement but with a purely political programme. The support of the workers caused the rapid growth of the Chartist Movement. The working class leaders supporting the Chartist Movement looked upon further reforms of Parliament as a necessary means to economic changes which alone could alleviate the workers' sufferings. The demand for universal suffrage kindled new hopes in them. The People's Charter of 1838 demanded the following:

- (1) Manhood suffrage;
- (2) Vote by ballot;
- (3) Annual Parliaments—annually elected;
- (4) Abolition of the property qualifications for the MPs;
- (5) Payment to members; and
- (6) Equal Electoral Districts—rearranged after each decennial census.

9. *Ibid.*, pp. 153-154.

10. G.D H. Cole, *op. cit.*, p. 16.

Gradually, the Chartist Movement also died down without bringing any solid gains to the workers.

Thus, it is seen that the 1830's were both a revolutionary period as well as a period of disillusionment for the working class. It was a period of revolution because new ideas such as 'trades unionism' indicating the need for a unified labour movement, the realisation of the importance of political reforms and the control of the machinery of the State as a necessary means to economic changes, the Owenite ideas of industrial democracy and workers' cooperation were experimented with; and a period of disillusionment because each such experiment left the working class more and more disillusioned. The workers were disillusioned with the Reform Act, with the Grand National, with the Owenite ideas and finally with Chartism. If trade unions were to succeed, firmer foundations had to be laid and new bases had to be searched for in keeping with the rising economic and political power of the capitalist class. This task was completed in the 1850's.

## **The Period 1850-1879**

### *New model unionism*

Gradually, the workers realised the futility of organising all the workers irrespective of their skill and trades under one union. They further realised that it would not be possible to overthrow capitalism at that stage of capitalist economic development and they had to accept it and operate within its framework. Now that, some of the rigours of anti-trade union laws had been relaxed, trade unions could function openly if they accepted the capitalist mode of production. What was needed then was that the trade union organisations should become stable, gather strength and seek to better the working conditions and the workers' standard of living within the system of individual enterprise and free competition. The industrial expansion of England after 1850 also facilitated the growth of this attitude amongst the workers especially the skilled ones.

It were the skilled workers that took upon themselves the task of reorganising the trade union movement. The establishment of the Amalgamated Society of Engineers in 1850 was the first step in the direction of organising workers on craft basis. The Society created the New Model and was followed by a spate of

such societies in almost all other important trades. The main features of the 'New Model' unions were: (a) a close combination of trade and friendly activities, (b) high initiation and membership fees, (c) membership open to only skilled men bound together by common craftsmanship, (d) centralised control, and (e) reliance on their organisational strength to secure shorter working hours, higher wages and other improvements in working and living conditions. Such unions were trade unions and friendly societies in an equal measure. Politics and open struggle were looked upon with disfavour by them. They relied more on controlling the supply of skilled labour through long apprenticeship and providing all sorts of benefits to their members in times of distress e.g. unemployment, sickness or death. Such societies dominated the trade union scene in England for a period of about forty years.

Though occasional attempts were made to unite the individual unions into a movement and combine them under a central organisation, the trade union movement essentially remained disjointed and sectional. In 1860, the London Trades Council was formed in order to keep a watch over the general interests of labour—political and social, both in and out of Parliament and to use its influence in supporting any measure likely to benefit trade unions. A group of leaders drawn from the engineers, carpenters, iron-founders, brick-layers whom the Webbs called the 'Junta' began to dominate the trade union movement through the Council. The Council sought to help every union on strike by securing financial aid from other unions. The Council became, as a matter of fact, a central organisation for the trade union movement as a whole.

The establishment of the International Workingmen's Association under Karl Marx in 1864 injected an element of revolutionary fervour into the British trade union movement. During the 1860's, the trade unions also joined the Reform Movement for the extension of the franchise. Between 1864 and 1874, the trade unions further concentrated on securing amendments to the existing trade union laws.<sup>11</sup> The Nine-Hour Movement also gained momentum during this period. The period between 1850 and 1875 was a period of economic expansion and prosperity for Great Britain and

11. For details, see Chapter 17.

coincided with the achievement of stability in the trade union field. This period also gave birth to the British Trades Union Congress.

*Attempts at forming a national organisation*

By 1860's Trades Councils covering more than one trade had been set up in almost all leading industrial towns. Besides, the trade unions had also built a tradition of helping each other financially on occasions of strikes and lockouts. In London itself, the London Trades Council had been set up under the leadership of the Amalgamated Society of Engineers, the Amalgamated Society of Carpenters, the Operative Bricklayers and the Friendly Society of Iron Founders.

The trade unions by now had developed a method of establishing organisations covering more than one trade at the local level. But as yet, no national organisation had come into existence. On particular occasions and at the initiative of a few of the local Trades Councils, a national conference of delegates would be called to discuss specific issues.

At the initiative of the Wolverhampton Trades Council, the Sheffield Association of Organised Trades decided to call such a conference to establish a national organisation among the trades of the United Kingdom for the purpose of effectually resisting all lockouts. The conference was held in 1866 at Sheffield consisting of 138 delegates representing about 280 thousand organised workers. The delegates decided to establish a permanent organisation to be known as the United Kingdom Alliance of Organised Trades. Its aim was to build up a central fund for aiding the members of unions locked-out by the employers. The Alliance held the second conference in September, 1867, but soon disappeared from the scene primarily because of the lack of interest shown by the 'Junta' of the London Trades Council.

The second important event in this process of the consolidation of trade unions at the national level was the formation of a private conference of Amalgamated Trades convened by the leading members of the London Trades Council to undertake the defence of the trade unions from the *Hornby vs. Close* decision. The implications of the decision may be summarised in the words of B.C. Roberts:

The Court held that because a trade union was at Common Law a body in restraint of trade it was an unlawful organisa-

tion, and, therefore, could not secure the protection of its funds. The unions had previously enjoyed this protection under the Friendly Societies Act, by depositing their rules with the Registrar of Friendly Societies, but it was now held that the unions were not covered by this Act. The effect of the decision was not only to deny to the trade unions the right to use the law courts to recover their members' money from a defaulting official; it meant they could not, apart from the existence of a statute, 'invoke the aid of the law for any purpose whatever'.<sup>12</sup>

The appointment of a Royal Commission in 1867 provided another occasion for the conference of the Trades Councils convened by George Potter on March 5, 1867. The conference set up a committee to watch over trade union interests in the proceedings of the Royal Commission. Before the Royal Commission could finish its work and make its recommendations, the Manchester and Strafford Trades Council decided to call a conference of the trades in 1868. The main idea behind inviting the Trades Congress was the establishment of an annual Congress of Unions rather than a special conference along the lines of those that had been summoned in previous years. "Their aim was to found a Congress at which unionists would meet annually and discuss those questions which were of outstanding importance to the trade union movement, thus clarifying their own minds and, at the same time, through the publicity which they hoped their deliberations would receive, enlighten the public as to the objects of trade unions and the intelligence and respectability of their leaders."<sup>13</sup>

### *Birth of the Trades Union Congress*

The Trades Union Congress assembled at Manchester on June 2, 1868 and continued its deliberations for a week. The Congress heard and discussed papers under various titles e.g. 'Trade Unions an Absolute Necessity', 'Trade Unions and Political Economy', 'The Effects of Trade Unions on Foreign Competition', 'Technical Education', 'Courts of Arbitration and Conciliation', 'Cooperation', etc. The delegates to the first Congress decided that the

12. B.C. Roberts, *The Trades Union Congress (1868-1921)*, pp. 35-36.

13. *Ibid.*, pp. 44-45.

gathering should be an annual event and agreed that the next Congress should be held in Birmingham and be organised by the Trades Council of that town. Thus, was the first Trades Union Congress set up which has subsequently come to be known as the British Trades Union Congress.

### *Trade union participation in political elections*

The experience of the British workers with the functioning of the Parliament during the years 1865 and 1874 consisted of contradictory elements. While amendments to the trade union laws legalised the trade unions<sup>14</sup> and helped them grow, the criminal law amendments, enacted in the teeth of workers' opposition and agitation, made it all the more difficult for them to function and engage in trade union activities. The workers and their unions, disappointed even with the Liberal Party, gradually drifted towards independent participation in election activities in order to send labour representatives to the Parliament. The Labour Representation League was formed and independent labour candidates were set up.

Thus, in this period two seeds were sown the fruits of which have since then dominated the British trade union scene. These were: (a) the birth of the Trades Union Congress which came into existence as the representative parliament of the trade union world to mobilise the workers' agitation against unfavourable labour laws; and (b) the growth of labour's interests in the Parliamentary elections which ultimately gave birth to the British Labour Party.

## **The Period 1880-1899**

### *New unionism*

The closing years of the 1880's saw the emergence of a new type of unions which were socialist in intent and purpose, which believed in building up working class solidarity and organising the unskilled also, concentrated on collection of funds for use during strikes and lockouts, dispensed with friendly benefits and aimed at the replacement of the capitalist system itself. The London Dock Strike of 1889 supported by all sections of workers was the turning

14. For details, see Chapter 17.

point in the rise of the 'New Unions' as distinct from the 'New Model Unions' which had dominated the scene from the 1850's.

For a while, there was a struggle between the 'New Unions' and the 'Old Unions' ('New Model Unions' which were called 'Old Unions' by now) to dominate the Trades Union Congress. Ultimately, the struggle ended in the success of the former not by the elimination of the latter but by their gradual conversion to socialist ideas. The 'New Unions', while not minimising the struggle for the day-to-day issues, concentrated more and more on State action and legislation. The 'New Unions' built up a powerful movement through their industrial struggles which led to the formation of the Independent Labour Party. Hence forward, the British Trades Union Congress was dominated by ideas of State action, nationalisation, socialisation and the development of a Labour Party which was to become a vehicle for the control of political power and for the realisation of these ideals.

### *Birth of the Labour Party*

The general spread and the gradual permeation of socialist ideas in the trade union ranks through the Social Democratic Federation and the Fabian Society led to the formation of the Independent Labour Party in 1893. The 'New Unionists' supported by the leaders of socialist thought continued in their attempts to urge the trade unions themselves and the Trades Union Congress to form an independent working class party. The individual trade unions, where they could, had been supporting and setting up candidates at the parliamentary and municipal elections. The Trades Union Congress as a whole was still reluctant to go in for a national party closely allied to the trade union movement. However, the annual conference of the Congress in 1899, under the pressure and influence of the socialist leaders, passed a resolution for a special conference of representatives from cooperating socialist trade unions and other working class organisations in order to devise ways and means for securing an increased number of Labour members in the next Parliament. As a result of this resolution, a conference was convened in February, 1900, consisting of representatives from the Trades Union Congress, the Independent Labour Party, the Social Democratic Federation, the Fabian Society and other working class organisations. The Conference led to the for-

mation of the Labour Representation Committee which ultimately converted itself into the Labour Party in 1906.

The end of the trade boom by 1891 brought a new ferment amongst the trade unions as unemployment increased and trade union membership recorded a heavy decline. It were the 'New Unions' which suffered most in this decline of membership. The deepening economic crisis resulted in a series of strikes in the cotton textiles, coal-mining, docks, railways, and other industries. The acute economic crisis of the nineties gradually influenced the 'Old Unions' also in favour of socialist ideas, which further led to the disappearance of their differences with the 'New Unions' and to the process of political consolidation.

Thus, by 1900 the trade union movement succeeded in securing a lawful standing, consolidating its ranks, and in accepting socialist ideals of reorganising the economic and social system of Great Britain. The trade union movement in England was betrothed to the socialist ideals during the 1880's, the process of marriage was completed during the nineties and the marriage gave birth in 1909 to the now famous child—the Labour Party.

### **Trade Unions During the Early 20th Century**

The trade union movement, as a whole, had won new allies and had become politically strong by now. However, the first decade of the 20th century found the trade unions once again struggling for the preservation of their hard won legitimate rights and for the protection of their legitimate child—the Labour Party from a premature death.

#### *Taff-Vale case*

In 1900, the railwaymen employed by the Taff-Vale Company in New South Wales went on a strike, though without any authority from their society. The Amalgamated Society of Railway Servants supported the strike action by granting strike pay to the strikers. The company succeeded in securing an injunction restraining the Society and its officers from committing acts calculated to damage the company and its interests. It also succeeded in securing court orders for damages against the Society for losses suffered by the company because of the strike action. The House of Lords, after a series of appeals, upheld the award of damages. The in-

junction order and the award of damages for losses resulting from the strike action struck a dangerous blow to the trade unions and their activities. The prevailing belief that such actions as the Taff-Vale Railway Company had now successfully brought were barred by the existing Trade Union Acts received a rude shock. Under the impact of the two judgements, the trade unions were prevented from conducting strikes and picketing which were essential to the conduct of trade disputes. There could never be a strike which would not inflict any losses on the employers. The very purpose of a strike is to cause economic losses to the employer in order to force him to concede the workers' demands. If the trade unions are forced to pay damages every time they go on strike, they would virtually cease to exist. Thus, this judgement practically negated all the gains that the trade unions had secured over the course of a century. Their very existence was once again threatened. One can very well imagine the anger and the frustration that swept through the trade unions. Demands were made for parliamentary legislation and protection. Ultimately, the Trades Union Congress, the Labour Party, and their allies got the situation reversed when the Trades Disputes Act, 1906<sup>15</sup> granted the trade unions immunity from such civil actions. The Act was a source of great relief to the trade union movement.

### *The Osborne judgement*

A threat to the political activities of trade unions and to the continued existence of the newly formed Labour Party which was mostly financed by the trade unions came from the Osborne judgement. W.V. Osborne was a branch secretary of the Amalgamated Society of Railway Servants who sought to restrain it from incurring any expenditure on political activities because he maintained that such an expenditure was *ultra vires*. The House of Lords ultimately upheld his contention. As a result of this judgement, one union after another was restrained by legal injunctions from contributing to the Labour Party's fund. The Labour Party faced a complete disappearance of the sources of its income. In order that the trade unions could pursue their political activities, contribute to the Labour Party or any other political party and finance the election of candidates to the Parliament.

15. See Chapter 17.

they had to be freed from the legal obligations of the Osborne judgement. This could be done only by a legislative measure authorising political activities by the trade unions and expenditure of funds for the same. Agitations were held demanding such a legislation, which ultimately came in 1913. The Trade Union Act of that year authorised political action by trade unions. However, certain restrictions were imposed on the exercise of this right. No trade union could engage in such activities unless so authorised by a ballot among members wherein a majority of those voting favoured it. A trade union could create a separate political fund for carrying on political activities. The union could require its members to make a separate contribution to the 'political fund' as distinct from its 'general fund'. However, any member who objected to contributing to the political fund had, on his signing on an approved form, to be exempted from all payments toward it without losing any of his rights as a member of the union. This meant that every member of a trade union had to make contribution to the political fund if so required by the union, unless he secured an exemption. After the General Strike of 1926, the Trade Disputes and Trade Unions Act, 1927 reversed the position by providing that no member could be required to make contribution to the political fund unless he, in writing, undertook to make such a contribution. The repeal in 1946 of the Trade Disputes and Trade Unions Act, 1927 reversed the position once again and the provisions of the 1913 Act are in operation at present.

### **The First World War Period**

During the First World War, trade unions gained in respect, recognition and strength because of the importance of the working class in war efforts. The war-time full employment also improved their bargaining position considerably. The outbreak of hostilities witnessed a close cooperation between the government and the trade unions which had voluntarily entered into an industrial truce to cope with the situation. However, the more radically minded trade unionists did not favour the policy of cooperation, especially in view of uncontrolled profiteering, rise in prices and wages lagging behind, and strongly agitated against the hardships facing the working class. By and large, dissatisfaction with the war-time conditions led to vigorous trade union activities in many indus-

tries which often resulted in unofficial work-stoppages. There was an immense increase in the trade union membership particularly that of the TUC, which claimed 6500,000 members in 1920 as compared to 2250,000 in 1913. The First World War also saw the emergence of the Shop Steward Movement and the Whitley Councils. The end of the war found the trade union movement more closely wedded to socialism and schemes of nationalisation.

### **The Inter-War Period**

The end of the First World War was soon followed by a period of rising prices, economic prosperity and increasing trade union membership. The working class, conscious of its importance, engaged in struggles not only to secure improvements in their working conditions but also to change the economic structure itself. However, the economic prosperity did not last long. By 1921, trade slumped, wages fell, and financial deflation was resorted to. This was a time when the employers were on the offensive and the trade unions were forced to take a defensive position. Although industrial unrest and conflict were widespread, the trade unions lost many important battles e.g. strikes called by the Triple Alliance in 1921 and TUC in 1925 in support of the miners ended in utter failure. Many strikes, particularly those in industries owned by the government, assumed a political colour and the government on its part took a direct part in several combats. In 1924, the Labour Party came to power with the support of the Liberals, but before it could do anything concrete for alleviating the suffering of the working class, it was defeated in a general election at the end of the year.

### *The General Strike, 1926*

Depression continued to persist during the few years immediately following, which ultimately caused further hardships to the workers. Occasional failures of some of important strikes during the preceding years did not deter the trade unions from agitating for improvement in living and working conditions. The miners in particular stuck to their earlier demands for nationalisation of coal mines and a national wage agreement. The General Council of TUC also came forward in support of the miners' demand for a

national minimum wage, and ultimately, the government announced in 1925 that mine-owners would receive a subsidy to enable them to pay a national minimum wage. However, the mine-owners received subsidy only temporarily. On the report of a Royal Commission headed by Sir Herbert Samuel, it was proposed to make certain reductions in wages as essential to making the industry profitable. The miners, extremely dissatisfied with the proposal, served strike notices, but the TUC started negotiations with the government to get the issue resolved. While negotiations were in progress, the printers at *Daily Mail* refused to print a leading article against the miners, which resulted in the adoption of a somewhat rigid attitude on the part of the government. The General Council of the TUC, which was anxious to promote a settlement of the miners' demands, continued its negotiations with the government up to the last minute, but in the meantime, it had also decided to prepare for struggle and set up a committee for strike action. Ultimately, negotiations broke down on May 3, 1926 and just the next day, the General Strike began.

The General Strike received widespread support of the working class; it was joined in the first instance by the miners, dockers, road transport, bus and tram workers, printers, railwaymen, and certain building workers. The engineering and shipbuilding workers were called out after a week had elapsed, but workers in the textile and distributive trades and post offices were allowed to continue at work. The workmen displayed a strong feeling of solidarity throughout the strike which lasted for 9 days.

The government had also been making careful preparations since July 1925 to meet the situation resulting from the apprehended strike. In order to secure maintenance of essential supplies the government used troops, police, special constables and volunteers. Although the strike was for the most part peacefully conducted, there were occasional clashes between the strike pickets and the 'blackleg' labour. Divergent views were, however, expressed regarding the legality of the strike. The General Council, finding that nothing tangible was forthcoming, wanted to resume talks with the cabinet. Ultimately, negotiations took place and an agreed formula evolved, but the miners who did not participate in the negotiations rejected the memorandum of settlement outright. Subsequently, the negotiating committee, while again hopeful of reaching settlement by negotiations, persuaded the General

Council to call off the strike. The strike ultimately ended in a humiliating defeat of the strikers. However, the miners stayed on strike with a feeling of having been betrayed.

Although the General Strike ended in failure, it demonstrated the feeling of solidarity among the organised workers. The workers also realised the futility of the Syndicalists' emphasis on direct action. The government, on its part, adopted a retaliatory attitude by passing the Trade Disputes and Trade Unions Act, 1927 which made sympathetic strikes or lockouts designed or calculated to coerce the government illegal, and imposed additional restrictions on trade unions' political activities and their conduct of trade disputes.<sup>16</sup>

### *Consolidation after the General Strike*

Immediately after the General Strike, the trade unions faced the problems of wage reductions, victimisation, and a substantial strain on their resources. The employers also realised that strained relationship with their workmen had resulted in considerable downswing in business and loss in world markets. There was a strong clamour for industrial peace the need for which was also realised by the government. In 1928, a series of conferences was held between the TUC and the employers. These conferences discussed numerous issues of joint concern, but the outcome were not very fruitful. The only concrete result of these conferences was the development of a cooperative approach to industrial relations.

In the years that followed, many important trade unions formed amalgamations and replaced loose federations by compact bodies. Several large unions of today were established during this period. The trade unions, disappointed with industrial action, swung to greater reliance on political action. Despite the deleterious clauses of the Trade Disputes and Trade Unions Act, 1927, they played an important role in the general elections of 1929 and saw the Labour Party once again coming to power with the support of the Liberals.

Unfortunately, the electoral triumph coincided with the greatest depression in the history of capitalism resulting in mass unemployment, and wages tumbling down. The Labour Government headed by Ramsay MacDonald could not do much for the

16. See also Chapter 17.

working class on account of the acute economic crisis facing the country. There were occasional disagreements between the government and the TUC on certain pertinent issues e.g. unemployment insurance, policy of deflation and cut in government expenditure. The question of effecting heavy cuts in expenditure aroused considerable controversies which ultimately led to the resignation of MacDonald in 1931. When he again formed the national government with the support of the Conservative and Liberal parties, the great bulk of the Labour Party stood in opposition to the new government and MacDonald with his tiny band of supporters within the party was expelled by the National Executive of the Labour Party. A general election was again held in October, 1931 in which the Labour Party candidates were badly defeated.

Although the electoral defeat of 1931 resulted in a serious setback to the Labour Party and the TUC, it also produced a salutary influence on the trade union movement. The political and industrial wings of the trade union movement came into closer relationship, which was more or less absent during the short regime of MacDonald's ministry. Besides, the trade unions started concentrating more on a constructive policy in place of "somewhat propaganda slogans of the past."<sup>17</sup> By and large, the Labour Party and the TUC developed a sound understanding of each other's points of view.

The year 1934 saw a gradual recovery of the economy. As a result, the hardships facing the working class began to ease. The trade union membership, which had reached its lowest point in 1933-34, again started rising year by year with the recovery of trade and rising money wages. Trade unions in different industries also amalgamated and formed national organisations. This led to a greater centralisation in trade union affairs.

As the unions grew in strength, "so did the number of disputes among officials about demarcation of their respective areas of recruitment",<sup>18</sup> i.e. jurisdictional disputes became more frequent. Many such cases came for decision before the General Council of the TUC which generally held that "no union should attempt to organise workers at any industrial establishment where another

17. Allan Flanders, *Trade Unions*, p. 22.

18. Henry Pelling, *A History of British Trade Unionism*, p. 209.

union already represented and negotiated on behalf of a majority of the workers.”<sup>19</sup> The application of the principle, no doubt, curtailed the individual worker’s freedom of choice and made it difficult for a number of small trade unions to compete with large ones, but at the same time, it prevented multiplication of bargaining agents which would have weakened their collective influence.

The years just preceding the outbreak of the Second World War saw the TUC acquiring substantial prestige not only in relation to its affiliates and the Labour Party but also in the eyes of the government which consulted the latter on many pertinent issues concerning labour.

### The Second World War Period

The Second World War increased the influence of the trade unions further as they subordinated their sectional interests to the interests of the nation as a whole and offered their cooperation in the mobilisation for the successful conclusion of the war. The end of the Second World War and the victory of the Labour Party in 1945 saddled the trade union movement with new responsibilities and obligations. With the Labour Party in power, to the development of which the trade unions had contributed so much, the British trade union world had to face a new situation altogether. The trade unions in Great Britain had been accustomed to opposing the government and the employers throughout their whole course of existence. Important industries were now nationalised for which they had been clamouring for years. What should be the policy of trade unions in nationalised industries? What should be their reaction to the policies pursued by the national government under the Labour Party? What should be their wage policy in a full-employment and semi-planned economy? To what extent a national wage policy should be allowed to supercede industry-wide collective bargaining on wages and other allied matters? These were the questions which the trade unions had to answer immediately after the end of the Second World War and some of these questions still loom large before them.

19. *Ibid.*, p. 210.

## The Present Position

Socially and politically, the trade unions have acquired a status and influence which have to be reckoned with in the formulation of national policies in almost all fields. As a result of collective bargaining with employers and their organisations, the British trade unionism shares with them the responsibility for an elaborate system of industrial codes for regulating working conditions, wages, hours of work, discipline, promotion and other related matters. Politically, it helps in shaping the political, economic and social policy of the nation. The trade unions are consulted by the government on all important questions of policy and legislative proposals in the fields of foreign relations and financial, social and industrial affairs. In addition to influencing new legislation, they have also secured a place in the administration of existing legislation and their representatives sit on a wide range of statutory boards, tribunals, wages councils, and other authorities. They have secured special representation in the administration of nationalised industries.

Organisationally, though individual trade unions maintain a strong craft bias, yet frequent amalgamations and establishment of federations have succeeded in creating trade union organisations on an industrial basis. Thus, each industry has a leading trade union organisation. The existence of the scheme of trade groups for the purposes of representation to the General Council of the Trades Union Congress has further succeeded in bringing different unions together.

### *Membership and size*

The coming together of different trade unions by amalgamation or by the formation of federations is also evidenced by the figures of number of trade unions and their membership as shown in Table 1. It is evident from the table that between 1956 and 1969, while the number of unions has gradually gone down, their membership, both total and average per union, has been on increase during the course of the years under study.

A notable feature of the trade union movement in Great Britain is that bulk of the membership is concentrated in a few big unions. This is evident from Table 2.

Table 2 shows that in 1965 the largest 37 unions i.e. nearly 6 per cent of the total number of trade unions in Great Britain accounted for 81 per cent of the total trade union membership, whereas, 456 trade unions (having a membership of less than 5000 each)

constituting nearly 79 per cent of the total number of unions, accounted for only 4 per cent of the total trade union membership. Similarly, in 1969, the largest 40 unions which constituted nearly 8 per cent of the total number of unions in Great Britain accounted for more than 84 per cent of the total membership. On the

TABLE 1

Number of Trade Unions, Total Trade Unions' Membership and Average Membership Per Union in Great Britain (1956-1969)

<i>Year</i>	<i>Number of unions at the end of the year</i>	<i>Total membership at the end of the year (000's)</i>	<i>Average member- ship per union* (000's)</i>
1939	1019	6298	6.2
1950	732	9289	12.7
1956	685	9778	14.3
1957	685	9829	14.3
1958	675	9639	14.3
1959	668	9623	14.4
1960	664	9835	14.8
1961	646	9897	15.3
1962	626	9887	15.8
1963	607	9934	16.4
1964	598	10079	16.9
1965	583	10181	17.5
1966	574	10111	17.6
1967	555	9970	17.9
1968	533	10034	18.8
1969	508	10302	20.3

*Source :* U.K. Ministry of Labour Gazette, December 1959 for figures of 1939 and 1950; Ministry of Labour Gazette, Vol. LXXIV, No. 11, November 1966, p. 726 for figures of 1955 to 1958 and *Employment and Productivity Gazette*, Vol. LXXVIII, No. 11, November 1970, p. 1024 for figures of 1959 to 1969.

\*Computed on the basis of figures mentioned in the preceding two columns.

other hand, in the same year, 392 trade unions at the bottom constituting more than 77 per cent of the total number of trade unions had less than 4 per cent of the total trade union membership. In

TABLE 2

## Concentration of Trade Union Membership in Great Britain (1965 and 1969)

Number of Members	1965				1969			
	Number of unions	Total membership (000's)	Percent- age of total no. of all unions	Percent- age of total membership of all unions	Number of unions	Total membership (000's)	Percent- age of total no. of all unions	Percent- age of total membership of all unions
Under 500	247	40	42.6	0.4	212	33	41.7	0.3
500 and under 1000	57	40	9.8	0.4	60	42	11.8	0.4
1000 and under 2500	89	41	15.3	1.4	67	110	13.2	1.0
2500 and under 5000	63	218	10.9	2.1	53	194	10.4	1.9
5000 and under 10,000	30	212	5.2	2.1	28	192	5.5	1.9
10,000 and under 15,000	19	237	3.3	2.3	11	134	2.2	1.3
15,000 and under 25,000	18	337	3.1	3.3	23	430	4.5	4.2
25,000 and under 50,000	20	708	3.4	7.0	14	492	2.8	4.8
50,000 and under 100,000	19	1312	3.3	12.9	16	1116	3.1	10.8
100,000 and under 250,000	8	1189	1.4	11.7	15	1875	3.0	18.2
250,000 and more	10	5746	1.7	56.4	9	5684	1.8	55.2
TOTALS	580	10180	100.0	100.0	508	10302	100.0	100.0

Source : U.K. Ministry of Labour Gazette, Vol. LXXIV, No. 11, November 1966, p. 725 for figures of 1965 and U.K. Employment and Productivity Gazette, Vol. LXXVIII, No. 11, November 1970, p. 1023 for figures of 1969.

India too, the bulk of membership is concentrated in a few large unions, though the degree of concentration is less than that in Great Britain.<sup>20</sup>

### The Trades Union Congress

The Trades Union Congress is at the apex of the British trade union movement to which are affiliated all important trade unions. Founded in 1868, the Trades Union Congress has grown in influence from year to year and is today a unifying force for British trade unionism. Unlike the national centres of trade unions in many countries, its position is unrivalled and is the only central federation of trade unions for Great Britain as a whole. Organisations, about 185 in number, representing about 90 per cent of the total membership of 10 million are affiliated directly or indirectly to the Trades Union Congress. The unaffiliated organisations are, in main, small. There are only two trade unions with over 100 thousand members that are not affiliated to the Congress but they also maintain friendly relations with it. They are: (i) the National and Local Government Officers' Association, and (ii) the National Union of Teachers.

The functions of the Trades Union Congress, in general, are to promote the interests of its affiliated organisations and to improve the economic and social conditions of the workers. In order to achieve these purposes, the Congress supports public ownership and public control of national resources and services especially the nationalisation of land, mines, minerals and railways. It also advocates the expansion of State and municipal enterprises for the provision of social necessities and services, and participation of the workers in the operation of public services and industries. In the field of working conditions and wages, it demands a working week of forty hours, a legal minimum wage for each industrial occupation and payment for holidays etc. In the field of social security it asks for unemployment benefit, training facilities for both juveniles and unemployed adults, adequate housing, compensation for industrial accidents and diseases, pensions for the old and the invalid, the widowed mother and the dependent children. In the field of education, it works for raising the school leaving age to 16, adequate

20. See Table 17.

maintenance allowances, and State educational facilities from the elementary schools to the universities. In the international field it is a member of the ICFTU and represents the British trade unions at the ILO.

### *Structure of the Trades Union Congress*

The Trades Union Congress has affiliated organisations which number near about 185. These affiliates are themselves amalgamations or federations, each uniting a number of unions which are individually enumerated on the Ministry of Labour returns. The affiliates are divided into nineteen industrial groups i.e. (1) mining and quarrying, (2) railways, (3) transport (other than railways), (4) ship building, (5) engineering, founding and vehicle building, (6) iron, steel and minor metal trades, (7) building, wood-working and furnishing, (8) printing and paper, (9) electricity, (10) textiles, (11) clothing, (12) leather, boot and shoe, (13) glass, pottery, chemicals, food, drink, tobacco, brushmaking and distribution etc., (14) agriculture, (15) public employees, (16) civil servants, (17) technical engineering and scientific, (18) professional, clerical and entertainment, and (19) general workers.

### *Annual Congress*

The Annual Congress is the main policy making body. Affiliated unions are entitled to representation at the Congress on the basis of one delegate for every five thousand members or part thereof, though many of the larger unions do not send their full quota. Still, these larger unions are in a position to dominate the proceedings of the Congress because of the system of a card vote whereby each delegation casts its entire vote (based on the union's membership in thousands) as a block—one way or another. The Congress discusses the report presented by the General Council and motions submitted by the affiliates. The Congress also elects the officers and the members of the General Council.

### *General Council*

The General Council is the executive body of the British Trades Union Congress and consists of 39 representatives elected by the Annual Congress. These 39 representatives are allotted to the 19 trade groups as mentioned before, the number varying from one to four for each one of them. Two seats are reserved for women

workers. The members of the General Council, except the General Secretary, serve the Trades Union Congress in a part time capacity only. Most of them are full time officers of their own unions. The General Secretary who is elected by the Congress has the full time responsibility for furthering the interests of the Trades Union Congress and the trade union movement as a whole. To assist the General Secretary there is a permanent administrative staff consisting of an Assistant General Secretary, an Assistant Secretary and a number of officers in the specialised departments.

### *Relationship with the affiliates*

The Trades Union Congress is, as a matter of fact, a very loose organisation—the trade union affiliates retaining complete autonomy in their policy and action. Congress resolutions and policies are not binding on them. The Congress and the Council have no authority to enforce their decisions, but generally influence the affiliates by counsel and consent.<sup>21</sup> Rule 13 of the constitution empowers the General Council to suspend and the Congress to expel any affiliated organisation persisting in conduct detrimental to the interest of the trade union movement or contrary to the declared principle or policy of the Congress. But this power has only once been used against the National Union of Seamen in 1928. Under Rule 11, the affiliates are required to keep the General Council informed about major industrial disputes but the General Council has no powers to intervene in the dispute except offering advice with the object of promoting a settlement.

It is in the area relating to disputes between affiliated unions that the General Council has achieved a measure of success. The awards of the Disputes Committee of the General Council are in practice almost always accepted.

However, the strength and the influence of the Trades Union Congress do not lie in the formal powers of the General Council over the affiliates. It is the demands of the complex economy and the increasingly important role of the government in the economic life of Great Britain that have conferred considerable authority on the Trades Union Congress. The first source of strength of the Trades Union Congress lies in its unrivalled position and the tradition of solidarity of the British trade union movement. The

21. Henry Richardson, *op. cit.*, p. 183.

second source of strength is the capacity of its able leadership which understands the movement, traditions and methods. Finally, it is the continuous need of representing and associating the trade union movement as a whole with the government and the central employers' organisations that has made the Trades Union Congress the important spokesman of the British trade union movement.

### *Relationship with the Labour Party*

As said earlier in this chapter, it was the Trades Union Congress that played the main role in establishing the Labour Party in 1900, although for the first six years, it was known by the Labour Representation Committee. The Labour Representation Committee was set up by the combined efforts of the trade unions and cooperative and socialist organisations with the immediate objective of securing an increased number of Labour Members in the Parliament.

The Labour Party has a two-fold structural relationship with the trade union movement i.e. (a) with the individual trade unions, and (b) with the Trades Union Congress.

From the inception of the Labour Party, the bulk of its membership has been provided by the trade unions, which has generally been of the order of over 80 per cent. Similarly, the major portion of the Labour Party funds has come from the contributions from the trade unionists. Between 1944 and 1958, the contribution by the trade unionists to the Central Labour Party funds was about 75 per cent of the total funds. However, not all the unions which are affiliated to the TUC are also affiliated to the Labour Party at the national level.

Apart from the unions affiliated to the Labour Party at the national level, many local branches of trade unions also affiliate to the local and constituency Labour Parties. In the larger towns and cities having many constituencies, a number of trade union branches are affiliated to the City, Borough or Central Labour Parties also. The Labour Party has also created Regional Councils of Labour providing an intermediate link between the National Executive Committee and affiliated bodies including constituency parties and trade unions. Thus, politically affiliated trade unions may influence the Labour Party's policies and activities at three or four levels from the local or constituency party to the Annual Party Conference.

At the Labour Party's Annual Conference, affiliated trade unions are represented by one delegate for each 5000 members who have paid the affiliation fees for the preceding year. There is one voting card for each 1000 members. As the bulk of trade unions' membership is concentrated in a few bigger unions, the latter are in a position to influence the decision at the Party's Annual Conference. The system of card vote has, however, been occasionally criticised particularly by the political wing of the party, as the system has enabled the trade unions to form 'blocks' and dominate over the deliberations of the Annual Conference.

The Annual Conference elects the Party's National Executive Committee for the ensuing year. The National Executive Committee has 27 members of whom 12 are nominated by the affiliated trade unions and elected by them, 7 are nominated by the constituency parties and federations of parties and elected by their delegates, 1 is nominated by cooperative, socialist and professional organisations and elected by their delegates and 5 are women, who may be nominated by any of the affiliated organisations but are elected by the Conference as a whole. The remaining 2 members are the Party Treasurer elected by the whole conference and the Leader of the Parliamentary Labour Party, who is an *ex-officio* member.

Thus, we find that the trade unions provide the Labour Party with the bulk of its membership and finance and are in a position to influence the deliberations of the party at various levels. The political influence of trade unions is, however, most commonly associated with their support of parliamentary candidates. In the beginning, an overwhelming majority of the Labour Party's candidates for parliamentary elections were trade union nominees, but, during the course of time, the proportion gradually decreased. The proportion of trade union sponsored candidates elected to the Parliament to the total Labour MPs has also gradually gone down.

However, about half of the trade unions affiliated to the TUC do not have any link with the Labour Party, but their membership in relation to the total affiliated membership of the party is relatively small. So far as the relationship between individual trade unions and the Labour Party is concerned, the TUC is not directly involved, but it may issue directives to the affiliates.

The Trades Union Congress has its direct relationship with the Labour Party. By its Constitution, the TUC is pledged to extend assistance to any other organisation with similar objects including the public ownership and control of natural resources and services. In many respects, the objectives of the TUC and the Labour Party are similar. The Constitution of the Labour Party also provides for cooperation with the General Council of the Trades Union Congress in joint political or other action.

Organisationally, the most significant link between the TUC and the Labour Party is provided by the National Council of Labour. The Council consists of the Chairman and six members each of the TUC, the Labour Party and the Cooperative Union. The Secretaries of the three bodies are the Joint Secretaries of the National Council of Labour. The National Council holds its regular meetings which are presided over by the Chairman of the three bodies in turn. The Council considers all questions affecting the Labour and Cooperative Movements as a whole. It seeks to promote joint action, whether by legislation or otherwise, on all questions affecting the workers as producers, consumers and citizens. Contacts between the Council and the Labour Government have been maintained through a Liaison Committee. Besides, Ministers concerned with particular policy matters attend the Council's meetings from time to time for exchange of views and information.

Divergent views are often expressed regarding the nature of relationship between the individual trade unions and the TUC, on the one hand, and the Labour Party, on the other. More frequently, the relationship has been said to be very close and intimate, but sometimes, there is said to exist only a formal link between the two particularly on non-industrial matters.

As said earlier, the constitution of the Labour Party enables the trade unions to have a complete control over the Labour Party, but in practice, the Labour Party has never been the political expression of trade unionism alone. Many issues which are not of direct concern to the trade unions are left to the political leadership of the party for initiation and processing. In general, the trade unions have rarely succeeded in forcing their views on the party on non-industrial issues, owing mainly to divisions among their own ranks. Such divisions among the trade unionists have been noticed on many recent political and economic issues. "The use of union power within

the party has never really amounted to outright dictation or consistently intolerable pressure."<sup>22</sup> The trade unions have generally sought to take the discussions of issues directly affecting them out of the Conference and the Parliamentary Party, so that they can be raised directly with the Party leadership.

The main trade union pressure on the Labour Party comes from the TUC, which is independent of the Labour Party, and which draws "much of its strength in negotiating with Labour from that independence."<sup>23</sup> If the unions disagree with the Party or want it to adopt a new course, their influence is normally exerted through talks between the Party and the General Council and the interested trade unions. "The Labour Party is bound to the unions not just by cash and card votes, but by the personalities and doctrines, common experience and sentiment—and mutual advantage."<sup>24</sup>

Although there have occasionally been sharp differences between the TUC and the Labour Party, the relationship between the two has generally been characterised by ties of cooperation. In both good fortune and misfortune, the two organisations have stood together, particularly when the Labour Party has been in opposition. It has mostly been during periods of Labour Government that the TUC has adopted somewhat more independent courses of action.

### **Problems of British Trade Unions Today**

This review of the history and growth of the British trade union movement will be incomplete without a reference to some of the main problems facing the movement today. The British trade unions have influenced the economic, social and political life of Great Britain in many ways. During the early years of the 19th century, there was an open conflict between the objectives, policies and practices of the early trade unions and the then prevailing concepts of the interests of the community. This conflict could be accommodated within the framework of the expanding and growing capitalist economy and the British empire. It has again come to the forefront with the changing position of Great Britain in the world economy and the disappearance of economic advantages from

22. Martin Harrison, *Trade Unions and the Labour Party Since 1945*, p. 337.

23. *Ibid.*, p. 340.

24. *Ibid.*

the vanishing British empire. This is clear from the introductory part of the Industrial Relations Act, 1971, which frequently refers to the "general interests of the community" as one of the guiding principles for the promotion of good industrial relations. It appears as if the existing industrial relations and trade union practices are not able to accommodate community's interests and are carried on primarily from the point of view of sectional interests of either or both of the working class or the employing class.

The reference to the "interests of the community" also shows that the interests of the working class are not the same as the interests of the community. It becomes particularly surprising when it is remembered that the working class constitutes an overwhelmingly major portion of the total labour force in Great Britain and the trade union movement is supposed to be the main spokesman of the working class. Out of the total working population of nearly 26 million, 23 $\frac{3}{4}$  million are employees and the total membership of trade unions comes to slightly more than 10 million.<sup>25</sup> The restrictions imposed by the Industrial Relations Act, 1971 on the trade union practices, and the curbs, hitherto utilised only during periods of war, to be placed on the right to strike even during normal times, are an indication of the fact that the existing economic strains cannot tolerate a free functioning of the trade unions.

Even the internal working of the trade unions is now sought to be regulated under the Act. As autonomous institutions, trade unions were so far free from surveillance of law and they could shape their internal working as they deemed fit. It is primarily for the sake of protecting the interests of individual workmen and individual members of a trade union that the working of trade unions is being regulated. Future will tell how far such a regulation will promote internal democracy in the working of the trade unions and to what extent it will weaken the trade union movement. However, this enactment is not to the liking of the trade unions.

25. U.K. *Report of the Royal Commission on Trade Unions and Employers' Associations*, 1968, pp. 6-7.

## CHAPTER 4

### TRADE UNION MOVEMENT IN INDIA (UP TO 1949) (1)

#### Early Years

The Indian trade union movement is hardly more than half a century old. When compared to the trade unions of Great Britain and the U.S.A., the Indian trade unions are still in infancy. It has been stated earlier that the trade union movement is a resultant of the modern capitalist industrial development. It is the late starting and the slow growth of modern capitalist industrial enterprises in India that account for the delay in the emergence of the Indian trade union movement. It was in 1851 that the first cotton mill was set up in Calcutta. In order to contrast the Indian situation with that of Great Britain, it should be remembered that it was around 1850 that the New Model Unions were emerging in Great Britain. When the trade union movement was stabilising itself in Great Britain, the first modern factory was set up in India. Naturally, the trade union movement in India had to wait for more than fifty years after 1850 before it could take any formal shape. Even after the first modern factory was established, the industrial growth of India proceeded at a snail's pace. However, whatever might have been the number of modern factories and the number of industrial workers in India during the second half of the nineteenth century, the working and living conditions presented a pathetic picture. Inevitably, the industrial workers, especially in the cotton textile industry, protested against these inhuman working and living conditions by going on strikes. There is a record of strike in 1877 at the Empress Mills at Nagpur over wage rates. Between 1882

and 1890, twenty five strikes were recorded in the Bombay and Madras Presidencies.”<sup>1</sup> These strikes took place spontaneously, though there were no formal organisations of workers.

Sometimes, a reference is made to the Bombay Mill Hands’ Association set up by N.M. Lokhande in 1890 under his presidentship as the starting point of the Indian labour movement. The purpose of this Association was primarily “to invite the attention of the Government and the Public to the many grievances of the textile workers of Bombay, and to agitate for the revision of the Factories Act of 1881.”<sup>2</sup> The Association also published a journal called ‘*Dinbandhu*’. However, the Bombay Mill Hands’ Association was, in no sense, a trade union for it had no membership, no fund, no rules and it did not organise any real sort of working class struggle against the employers. Lokhande was a philanthropic promoter of labour legislation and workers’ welfare—not a pioneer of labour organisation or labour struggle.<sup>3</sup>

Owing to the utter poverty and illiteracy of the workers and the lack of facilities, no formal trade unions could grow prior to 1918. Nevertheless, the workers came to develop common sentiments and, when driven to despair, resorted to strikes without much planning and thought and in many cases unmindful of the consequences of such an action. There were frequent strikes in the industrial centres all over the country. In 1908, there was a mass strike lasting for six days in Bombay against Tilak being sentenced to six years’ imprisonment.

“Despite almost universal testimony before Commissions between 1880 and 1908 to the effect that there were no actual unions, many stated that labourers in an industrial mill were often able to act in unions and that as a group, they were very independent.”<sup>4</sup> The establishment of the Amalgamated Society of Railway Servants in India and Burma in 1897 also did not herald the arrival of the Indian trade union movement for the Society consisted mostly of European and Anglo Indian railwaymen and was primarily concerned with friendly benefits. The Kamgar Hitbardhak Sabha of 1909 was also a philanthropic organisation for

1. R. Palme Dutt, *India Today*, p. 375.

2. V.B. Karnik, *Indian Trade Unions—A Survey*, p. 8.

3. R. Palme Dutt, *op. cit.*, p. 375.

4. D.H. Buchanan, *The Development of Capitalist Enterprise in India*, p. 25.

welfare work amongst the industrial workers of Bombay and was very little concerned with trade union work for improving wages and working conditions.

Under the impact of growing nationalism and national struggle and everyday worsening working and living conditions in the face of rising prices and profits made by the employers, the workers became more and more militant and restless. On the eve of the First World War, the world of Indian labour was seething with unrest and discontent looking around for an able leadership and a catalytic agent to give expression to its sufferings and aspirations.

### The First World War Period

It was in this context that the First World War came in 1914. The war boosted the Indian industrial growth, but at the same time, led to a sharp rise in prices and, consequently, to a sharp increase in the cost of living and also to a wage lag. The struggle for national independence also became sharper during this period and the socialist revolution of Russia sent out waves of revolutionary ideas all over the world. These revolutionary ideas emanating from the first socialist revolution of the world found a sympathetic chord in the heart of the Indian working class also. Ideologically and politically, conditions were ripe for the emergence of a high degree of working class militancy expressing itself in strikes and ultimately in the formation of trade unions.

The economic and political aftermath of the First World War, the Martial Law, the Rowlett Act, the Jallianwala Bagh incident resulting in the ruthless massacre of hundreds of unarmed citizens, and the general suppression of all forms of political expressions brought to the workers a sense of political maturity. Economically insecure and getting politically mature, supported by a band of selfless political workers, philanthropes and others, the Indian workers launched upon a series of strikes—beginning in 1918 and continuing till 1920. Practically every month from the end of 1918 to the first half of the 1920's saw strikes occurring all over the country at this centre or that, so much so, that the first six months of 1920 alone recorded more than two hundred strikes. It was out of this economic struggle against rising cost of living and ruthless exploitation, victimisation, suppression and

political agitation against the foreign rule that the Indian trade union movement was born. The establishment of the ILO in 1919 and the formation of the AITUC in 1920 gave shape to the movement. Most of the trade unions, which were primarily strike committees in the beginning, took a formal organisational shape and started functioning on a continuous basis spearheaded by the Madras Labour Union under the leadership of B.P. Wadia. The Madras Labour Union was formed in 1918. The same year saw the establishment of a number of unions in Bombay, Calcutta and Madras. By 1920, trade unions had been organised in almost all important industries such as railways, docks, textiles, engineering and coal mining. The Ahmedabad Textile Labour Association was also established in 1920 under the leadership of Ansuya Ben Sarabhai and Shanker Lal Banker. Thus, when the AITUC was formed in 1920, it had 64 trade unions affiliated to it with a total membership of 140,854.

### **The Period 1920-1929**

◁ The period beginning from 1920 witnessed a continuous growth in the number of trade unions and their membership. Though the mortality rate of these early trade unions was very high, new trade unions continued to be formed all the time so as to provide growth and expansion to the Indian trade union movement. ▷

The following are the main features of the Indian trade union movement during the 1920's :

- (1) Formation of the AITUC;
- (2) Expansion in the number of trade unions and membership;
- (3) Enactment of the Indian Trade Unions Act, 1926 giving legal protection;
- (4) Increase in the frequency of industrial disputes causing work-stoppages;
- (5) Growth of the leftist influence on the Indian trade union movement; and
- (6) Split in the AITUC.

#### **(1) Formation of the AITUC**

The first year of the period under review (1920-1929) saw the establishment of the All India Trade Union Congress. The formation of the AITUC was the direct result of the establishment of the

ILO in 1919. The purpose behind the establishment of the AITUC was to secure a nominating body for representing Indian labour at the International Labour Conference. The constitution of the ILO required that labour representatives to the I. L. Conference be nominated by the government concerned in consultation with the most representative central labour organisation in the country. The formation of a central labour federation at such an early stage in the history of the Indian labour movement can be explained only in terms of the requirements of the Constitution of the ILO.

Normally, there comes a time in the history of the labour movement of a country when the formation of a central labour federation becomes necessary to give expression to the sentiments of labour's solidarity as well as to provide mature leadership and guidance to the individual trade unions that may be functioning in different industries and localities. That was how the British Trades Union Congress was born or the American Federation of Labour was set up. Individual trade unions operating in different contexts themselves felt the need of establishing such a central federation. In India the process seems to have been reversed to a certain extent. The central federation came first, followed by the emergence of individual trade unions in different industries.

Apart from being a body responsible for recommending the name of the Indian labour representative to the I. L. Conference, the AITUC provided a forum for united work by leaders and unions of different colour and complexions. The first President of the AITUC was Lala Lajpat Rai—a veteran leader of the national movement. The All India Trade Union Congress of the day was primarily characterised by the outlook of the middle class leadership inculcating principles of moral and social improvement of the workers and interested primarily in labour legislation and welfare provisions. When it came in conflict with the militant leadership of the communists based upon class struggle, this outlook of the initial leadership caused a split in the AITUC at its Nagpur Session of 1929.

## (2) *Expansion in the number of trade unions and membership*

Though no accurate information is available as regards the number of trade unions and their membership for the period under review, it can safely be stated that the number of trade unions conti-

nued to increase with occasional fluctuations because of a high mortality rate. The Trade Union Directory as published by the AITUC in 1925 estimated that 167 trade unions were functioning in the country in 1924 with a membership of 223,377. Dr. Loknathan estimated the strength of the trade unions to be 100 with a membership of 130,000, exclusive of organisations of government servants. The ILO estimated a total membership of about 150 to 200 thousand for the year 1929. Thus, whatever might have been the variations in different estimates, the Indian trade union movement did record an appreciable growth between 1921 and 1924.

As regards the progress of the Indian labour movement during 1925-30, an idea can be had from the progress of the AITUC and the number of trade unions registered under the Indian Trade Unions Act, 1926. The number of trade unions affiliated to the AITUC increased from 31 in 1925 to 59 in 1927 and recorded a slight decline to 51 in 1929. The number of trade unions affiliated to the AITUC was only a small percentage of the total number of trade unions functioning in the country then. The membership of the affiliated unions more than doubled between 1925 and 1929 rising from 90,000 in 1925 to 189,436 in 1929. Similarly, the number of trade unions registered in 1927-28 was only 29 and it increased to 104 in 1929-30. Thus, it is clear that the Indian trade union movement expanded further during the period 1920-29.

One point that needs to be mentioned in respect of this expansion is that much of it was concentrated in the provinces of Bombay, Madras and Bengal. As regards the coverage of industries, almost all important industries were touched during the period. In particular, railways, shipping, cotton, jute, mining, engineering, and printing and paper experienced considerable trade union activities.

### (3) Enactment of the Indian Trade Unions Act, 1926

It was during this period that the Indian trade unions secured the first legal protection in the shape of the Indian Trade Unions Act, 1926. All students of the early history of trade unionism in Great Britain and the U.S.A. are aware of the legal handicaps which the early trade unions had to face under the Common Law. Court injunctions against strikes and prosecution of trade unionists under the doctrines of criminal conspiracy, restraint of trade and

breach of contract were common. The prosecution of B.P. Wadia, the President of the Madras Labour Union, by the Buckingham and Carnatic Mills in the High Court of Madras in 1920 and the grant of an injunction against the strikers opened the eyes of the trade union leaders in India to the dangerous potentialities of the Common Law as regards trade union activities. It was realised that the Indian employers would leave no stone unturned to make use of the Common Law to stifle the nascent Indian labour movement if no legal protections were secured at an early date. Owing to the valiant efforts of N.M. Joshi, and his associates and under the impact of the ILO, the Indian Trade Unions Act, 1926 was passed which provided protection against criminal liability under Section 120(B) of the Indian Penal Code to the officers and members of Indian trade unions registered under the Act. The Act also provided security against cases of civil damages arising out of trade disputes.<sup>5</sup> This enactment, with all its limitations which subsequently became manifest, did give a major and urgently needed protection to the Indian trade unions and thus gave a fillip to the growth of Indian trade union movement.

#### (4) *Increase in the frequency of industrial disputes causing work stoppages*

If it is correct to say that the trade unions grow to the extent that they constantly struggle for securing and protecting workers' rights and privileges and if strikes are any indications of this ceaseless struggle, the frequency of strikes and an increase in their duration and the number of workers involved during this period are strong indicators of the virility of the early Indian labour movement. Table 3 gives an idea of the number of strikes and lockouts, workers involved and mandays lost during 1921-1929.

A perusal of Table 3 indicates that work-stoppages arising out of strikes and lockouts became frequent during the period 1920-29. The year 1921 recorded the highest number of 396 strikes and lockouts involving 600,351 workmen. Though the number of stoppages and workers involved in subsequent years of the period never reached the peak of 1921, the number of mandays lost was exceeded in four years reaching the highest point in 1928. The formative years of all the labour movements are characterised

5. For details, see Chapter 18.

by frequent strikes and the Indian scene is no exception to this. The economic hardships caused by the First World War provided a highly inflammable material for increase in the number of strikes and the fire was further fanned by the growth of left-wing influence on the Indian labour movement after 1925.

TABLE 3

Number of Strikes and Lockouts, Workers Involved  
and Mandays lost in India (1921-29)

<i>Year</i>	<i>No. of strikes and lockouts</i>	<i>No. of workers involved</i>	<i>No. of mandays lost</i>
1921	396	600,351	6,984,426
1922	278	435,434	3,972,727
1923	213	301,044	5,051,704
1924	133	312,462	8,730,918
1925	134	270,423	12,578,129
1926	128	186,811	1,097,478
1927	129	131,655	2,019,970
1928	203	506,851	31,647,404
1929	141	531,059	12,165,491

*Source : Various issues of Indian Labour Year Book.*

(5) *Growth of the left wing influence on the Indian trade union movement*

The early leadership of the Indian trade union movement consisted primarily of moderates and philanthropes who were unaware of the concept of class struggle and the desirability of establishing a new economic order based on socialist principles and the revolutionary role of the industrial working class. These leaders were primarily interested in obtaining legal and constitutional protection to workers and trade unions and securing improvements in their working and living conditions within the existing framework. They were very much akin to the leadership of the Indian National Congress with interest in Home Rule and Constitutional Reforms. The mighty revolutionary waves generated

by the Russian Revolution took sometime in reaching the Indian shores. Under the influence of secretly trickling communist literature, a number of workers led by S.A. Dange in Bombay and Muzaffar Ahmad in Calcutta started taking interest in trade union work. The starting of the publication of the English weekly called 'Socialist' by Dange in 1923 in Bombay and a Bengali weekly entitled 'Janawani' by Muzaffar Ahmad in Calcutta heralded the birth of a communist movement in India. The communists started a regular drive for systematic work in the trade union movement which is evident from the following observations of Karnik:

They were determined workers, earnest and enthusiastic, they worked day and night. They had no interest in life except their work in trade unions and the Communist Party. They organised a number of new unions, they revived some old unions, they captured some others from older, moderate leaders. In 1926 and 1927 they organised a number of strikes, some of which were successful. There was a rise in the number of unions as well. There was more activity amongst workers; more meetings, processions and demonstrations were organised than during the preceding period. A new spirit of militancy also became evident.<sup>6</sup>

The communist leaders organised the textile workers of Bombay and established the famous Girni Kamgar Union. They also unionised the jute workers of Calcutta who were being subjected to ruthless exploitation by European and Indian employers. In 1928, they organised a big general strike of textile workers at Bombay lasting from April to October. The strike ended in October when the Government of Bombay appointed the Fawcett Committee to go into the standardisation scheme against which the strike was mainly directed. The success of this strike attracted more workers to the Girni Kamgar Union and its membership recorded a phenomenal increase. The communist influence spread to many other industries such as railways and docks. Similarly, in Calcutta, the service rendered by a band of zealous workers under the influence of communist ideology brought thousands of workers under the trade union fold. They staged

a successful strike at the Lillua Workshop of E.I. Railway. More and more unions came under the control and influence of the communist workers. For the first time in the history of the Indian labour movement, workers showed a degree of political maturity and organisational strength when they joined the boycott of the Simon Commission in close cooperation with other nationalist forces in the country. The All India Workers and Peasants' Party formed in 1928 worked as a united centre for these progressive forces. The first of May in 1927 was for the first time celebrated at Bombay as 'Labour Day'—“the symbol of the opening of a new era of the Indian labour movement as a conscious part of the international labour movement.”<sup>7</sup>

In spite of severe repressions let loose by the Government of India culminating in the Kanpur and Meerut trials, which picked the cream of communist workers working in the trade union field, the seeds sown by their sacrifices continued to grow. By 1927, the majority of Indian trade unions were inspired by and came to believe in their leadership. ~~communist~~

#### (6) *The tenth session of the AITUC and the split*

It was under the shadow of the growing clash of ideologies and policies between the militant communist wing and the reformist trade union leadership that the tenth session of the AITUC was held at Nagpur in December 1929. The Conference adopted a number of resolutions deciding to boycott the Royal Commission on Labour and denouncing the Asiatic Labour Conference and the Round Table Conference. The session also decided to affiliate itself to the League against Imperialism and to the Pan-Pacific Trade Union Secretariat. All these decisions were against the policies pursued by the moderate leadership of the AITUC. It was too much for this leadership to swallow the growing militant and progressive character of the Indian labour movement which is evident from the adoption of these resolutions. Failing to have its way and refusing to abide by the verdict of the majority at the session, the moderate group walked out of the Congress with 30 unions having a membership of 95,639, which by the end of the next year, dwindled to 50,000. The dissidents formed a new federation called the Indian Trade Union Federation. However,

7. V.B. Karnik, *op.cit.*, p. 68.

the session continued its work and elected Subhas Chandra Bose as its President and S.V. Deshpande as its General Secretary.

The left-wing leadership which came to control the AITUC consisted of diverse elements and lacked coherence. As a result, a further split took place in 1931 when the communist section separating itself from the main body formed the Red Trade Union Congress. This split took place mainly "on the question of independent political role of the working class"<sup>8</sup> a view-point held by the communist leadership.

These splits had serious adverse effects on the strength of the Indian trade union movement which suffered crises after crises in its very early years. The AITUC, before it could complete even twelve years of existence, suffered two major splits dividing and weakening the Indian trade union movement. These splits can be said to be the beginning of a series of crises which have been tormenting the Indian trade union movement as is evident from its subsequent history also. However, the economic and political problems facing the working class were such and were so aggravated by the great depression of 1929 as to force the Indian workers to resort to concerted struggles and strikes despite the splits of 1929 and 1931.

### ✓ The Period 1930-1939

The Indian trade union movement during the period 1930-1939 may be studied under the following main heads which give an idea of the facts that conditioned its growth during this period.

- (1) The Great Depression and its effects on trade union activities;
- (2) Reunification of trade union movement; and
- (3) Formation of Congress Ministries under the Govt. of India Act, 1935.

#### (1) *The Great Depression and its effects on trade union activities*

The 1930's opened with the greatest economic blizzard in the history of capitalism known as the Great Depression bringing economic activities to a stand-still, with falling prices, wage cuts, mass unemployment and starvation on a large scale. As is well-

8. R. Palme Dutt, *op.cit.*, p. 392.

known, the periods of economic depression have disastrous effects on trade union activities. Even well established trade unions are thrown on the defensive with falling membership, wage cuts and retrenchment. This is what happened to the trade unions of the U.S.A. and Great Britain during the Great Depression. If the established trade union movements of the U.S.A. and Great Britain could be reduced to pieces under the impact of the Great Depression, its disastrous consequences for the Indian trade unions, still struggling to take roots in their infancy, can very well be imagined.

The Great Depression resulted in a decline in the membership of the Indian trade unions. Whereas the registered trade unions submitting returns had a membership of 242,355 in 1930, the figures declined to 208,071 in 1934. This was in the face of the fact that the number of registered trade unions increased from 104 in 1930 to 191 in 1934 i.e. though the number of registered trade unions increased, their membership declined. The increase in the number of registered trade unions cannot be taken as an index of the formation of new unions during this period, rather it shows that more and more unions were becoming aware of the importance of registration under the Indian Trade Unions Act, 1926. The decline in the membership of the trade unions was the result of the economic depression.

The disunited Indian trade union movement functioning under three central federations i.e. the truncated AITUC, the ITUF and the Red Trade Union Congress was not in a position to offer any resistance to the onslaughts of the employers and to the deteriorating labour standards. Trade union activities were in a state of doldrums and the employers freely resorted to wage cuts, retrenchment and schemes of rationalisation. It was not till 1934 that trade union activities revived again. Starting with the All India Textile Workers' Conference held in Bombay on the 28th January, 1934, waves of strikes rolled on in all the important textile centres of the country such as Bombay, Sholapur, Kanpur and Calcutta. The release of the communist workers who were convicted at the Meerut Trial added further strength to the activities of the Indian trade unions. These strikes were directed mostly against: (a) inhuman wage cuts, (b) intensive rationalisation resulting in speed-up and increase in work-loads, and (c) increase in unemployment. An idea of the temper of trade union activity in 1934 can be had

from the fact that the number of working days lost due to strikes and lockouts increased from 2261,731 in 1930 to 4775,559 in 1934 (see Table 4).

## (2) *Reunification of trade union movement*

As mentioned earlier, there was a split in the AITUC at the Nagpur Session in 1929. In 1930, the ITUF was formed by the moderates who had seceded from the AITUC. There was a further split in the AITUC in 1931 when the Red Trade Union Congress was formed by leaders who believed in the communist ideology and who left the AITUC when they found that they could not keep it wedded to their philosophy. Thus, it could be said that the Indian trade unions were divided into four groups in 1931 i.e. (a) the original AITUC under the control of the radicals, (b) the Indian Trade Union Federation controlled by the moderates, (c) the Red Trade Union Congress under the leadership of the communists, and (d) the group of independent trade unions unattached to any central organisation, the chief among them being, the All India Railwaymen's Federation and the Ahmedabad Textile Labour Association. The splits had been caused mainly on account of differences on the role of the Indian trade union movement in the field of politics and class struggle. Thus, in the context of these deep-seated fundamental ideological differences, it was not an easy task to bring about unity among the central organisations. Nonetheless, sustained efforts for unity continued to be made by the well-wishers of the movement, particularly, R.R. Gokhale, V.V. Giri, N.M. Joshi and Diwan Chamanlal. The Indian labour movement was ultimately reunified in 1940 through a series of compromises.

At the initiative of the All India Railwaymen's Federation, a Trade Union Unity Committee was set up in 1932 which formulated a series of proposals called the 'Platform of Unity' relating to hours of work, wage payment, unemployment, housing and other working and living conditions for which an immediate struggle was called for and, on the basis of which, immediate unity could be established. A Unity Conference was convened in 1932 but, of no avail. Another Unity Conference was held in 1933 wherein a draft constitution was adopted and which established the National Federation of Labour. Subsequently, the Indian Trade Union Federation merged itself with the National Federation of Labour under a new name—the National Trades Union Federation.

Attempts were continued to unite the National Trades Union Federation with the AITUC. In 1934, however, the Red Trade Union Congress was disbanded and the unions under its control came back to the AITUC. Thus, the leftists in the Indian trade union movement were once again united, though the split with the moderates still continued. In 1936, a series of proposals were drafted to unite the NTUF and the AITUC and out of these a set of proposals made by V.V. Giri, known as 'Giri Proposals', became the basis of a limited unity between the two federations in 1938. At a special session in 1938 at Nagpur, the NTUF was affiliated as a separate unit to the AITUC. The unity was completed in 1940 when the National Trade Unions Federation was dissolved and merged with the AITUC. Thus, Nagpur, the venue of the original split, sanctified itself in 1940 by bringing unity back to the trade union movement.

### (3) *Formation of Congress Ministries under the Government of India Act, 1935*

General elections to the Provincial Assemblies under the Government of India Act, 1935 took place early in 1937. As a result of the election, Congress Ministries were formed in all provinces except Punjab and Bengal. The formation of Congress Ministries heralded a new era in the history of the Indian labour movement.

The Joint Parliamentary Committee popularly known as the Simon Commission set up for the purpose of making recommendations for constitutional changes in India had been boycotted by the Indian National Congress and the progressive public opinion including that of the AITUC. The report of the Committee had been equally condemned by the AITUC and the Indian National Congress. However, when the new constitution under the Government of India Act, 1935 was introduced and elections were held, the Congress decided to contest the elections to demonstrate the massive popular support that it enjoyed. During the elections the AITUC had lent its whole-hearted support to the Congress which came out victorious sweeping the polls and Congress Ministries were formed.

Even prior to the formation of Congress Ministries, the trade union movement in India was experiencing a new spurt on the eve of the general elections in 1937. The Government of India

Act, 1935 provided for special labour and trade union constituencies for representing labour interests. Thus, trade unions became active in organising the workers, forming new unions and getting them registered with a view to winning the labour seats in the Provincial Assemblies. The political agitation against the report of the Joint Parliamentary Committee and the impending constitutional reforms were a source of political education of the Indian workers.

The Congress had also pledged itself to the fulfilment of the goals and aspirations of the working class which had been denied for long by the alien imperialist government. The Congress Election Manifesto had promised to the industrial workers "to secure to them a decent standard of living, hours of work and conditions of labour in conformity, as far as the economic conditions in the country permit, with international standard, suitable machinery for the settlement of disputes between employers and workers and protection against the economic consequences of old age, sickness and unemployment and the right of workers to

TABLE 4

**Number of Registered Trade Unions and Their Membership  
in India (1930-31—1939-40)**

<i>Year</i>	<i>No. of registered trade unions</i>	<i>No. of trade unions submitting returns</i>	<i>Membership of unions submitting returns</i>
1930-31	119	106	219,115
1931-32	131	121	235,693
1932-33	170	147	237,369
1933-34	191	160	208,071
1934-35	213	183	284,918
1935-36	241	205	268,926
1936-37	271	228	261,047
1937-38	420	343	390,112
1938-39	562	394	399,159
1939-40	667	450	511,138

*Source : Govt. of India, Indian Labour Year Book, 1946, p. 114.*

form unions and to strike for the protection of their interests." Thus, when the Congress Ministries were formed workers hoped that their long-standing grievances and demands would meet a fair and generous treatment. Accordingly, the Indian trade unions recorded a new spurt of activities starting from 1937 onwards, which is evident from Tables 4 and 5.

TABLE 5

Number of Strikes and Lockouts, Workers Involved and Mandays Lost in India (1930-39)

<i>Year</i>	<i>No. of strikes and lockouts</i>	<i>No. of workers involved</i>	<i>No. of mandays lost</i>
1930	148	196,301	2261,731
1931	166	203,008	2408,123
1932	118	128,099	1922,437
1933	146	164,938	2160,961
1934	159	220,808	4775,559
1935	145	114,217	973,457
1936	157	169,029	2358,062
1937	379	647,801	8982,257
1938	399	401,075	9198,708
1939	406	409,189	4992,795

*Source* : Govt. of India, *Indian Labour Year Book*, 1946, p.125.

### *An assessment of the achievements of the Congress Ministries*

The increase in the number of strikes during the period when the Congress Ministries were functioning is a significant indicator of the high hopes of the working class and the frustrations that they suffered. The Congress Ministries did provide a freer and more friendly atmosphere for the functioning of the trade unions, though firing, lathicharges and mass arrests during periods of strikes were not uncommon. Ministers intervened individually here and there to bring about amicable settlement of labour disputes. Welfare work was initiated providing for indoor and outdoor recreation, libraries, reading rooms and canteens. Protec-

tive legislations like Bombay Shops and Establishments Act, 1939 and U.P. Maternity Welfare Act, 1939 were initiated. Labour Enquiry Committees were set up in Bombay, U.P. and Bihar. These committees collected important and vital informations regarding conditions of life and work of industrial workers. At the same time, the Bombay Industrial Disputes Act, 1938 curtailed and severely restricted the right to strike, contrary to the Congress Election Manifesto.

It appears that the Congress Ministries made efforts, though limited, to ameliorate the conditions of life and labour of the Indian working class. However, the expectations of the working class were mostly belied. The frequent resort to repeated and long-drawn strikes in the Bengal jute mills, the Kanpur and Bombay textile mills and the general strike at Kanpur indicated that the Congress Ministries were unable to fulfil the cherished goals of the workers under the constitutional limitations of the Government of India Act, 1935.

### *Limitations of the Congress Ministries*

Here it may be relevant to refer to the limitations of the Congress Ministries which prevented them from acting up to the expectations of the working class. Firstly, the Congress Ministries lived for a short duration. They had barely lived for two years when they resigned in 1939 after the outbreak of the Second World War. Secondly, the composition of the Indian National Congress was such as to preclude it from any identification with the working class, whether industrial or agricultural. The Indian National Congress then was a platform where landlords, capitalists, intellectuals and workers all worked together for national independence. Therefore, the Congress Ministries were not working class ministries. The composite nature of the Indian National Congress had long been evident to the Indian trade unionists. When the President of the AITUC, R.S. Ruikar, wrote a letter to Dr. Rajendra Prasad, the President of the Indian National Congress in 1934-35 drawing his attention to the complaint of the trade union movement against the repressive policy of the imperialist government, the President of the Indian National Congress in his reply clearly stated, "The Congress being a national organisation and not a class organisation, it is not inconceivable that occasions may arise when the Congress view may not tally with the trade union view

and in all such cases the Congress will, of course, take its own line of action.”<sup>9</sup> What the President of the Indian National Congress stated in 1935 became amply evident when the Congress Ministries were pursuing their labour policy during 1937-39. This is true even today. Thirdly, the Congress Ministries had to function under severe constitutional and financial limitations. Lastly, the foreign and Indian capitalists had obtained too firm a stronghold of the Indian economy to be dislodged from their anti-labour policies by limited constitutional and political changes. Even when the Congress Ministries were in operation, the working class had to wrest, whatever concessions it could, from the employers through strikes and struggles. It is this fact which explains the upsurge in trade union activities during the Congress regime of 1937-39.

### ✓ The Period 1940-49

Two events of this period which have left their permanent imprint on the Indian trade union movement are: (a) the Second World War, and (b) the achievement of Independence. This period, thus, from the point of view of its impact on the Indian trade union movement can conveniently be divided into two parts i.e. (a) the war period, and (b) the post-Independence period.

#### *(a) The Second World War period*

Though the Second World War was unleashed in Europe on the 1st of September 1939, its impact on India's political and economic life became visible from 1940 onwards. Immediately after the declaration of war between the U.K. and Germany, the Imperial government dragged India into the holocaust of the war without any consultation with the Indian public opinion. Consequently, the Congress Ministries resigned and the administration of the provinces were carried on by the Governors with the help of Advisers. The Government of India adopted a number of emergency measures putting severe restrictions on the rights and liberties of the people. The most comprehensive of the measures was the Defence of India Rules.

The lasting effects of the war on the Indian trade union movement can be discussed under the following five major heads:

- (1) Attitude towards the war and the split in the trade union movement;

9. *Bombay Chronicle* Aug. 7, 1935 as quoted in V.B. Karnik, *op. cit.*, p. 85.

- (2) Impetus to the trade union growth and increase in the number of industrial disputes;
- (3) Initiation of the practice of paying D.A. and Bonus;
- (4) Inauguration of the practice of compulsory adjudication; and
- (5) Creation of tripartite bodies in the field of labour and industrial relations.

(1) *Attitude towards the war and the split in the trade union movement*

It is clear that the behaviour and activities of the Indian trade unions during the war would be conditioned by their attitude towards it. It was an outrage on the national public opinion when war was declared on behalf of India without consulting any of the political parties. Thus, the Indian public opinion was opposed to the participation in efforts meant for supporting the imperialist war. This was the view of the AITUC in the beginning. However, the radical democrats under the leadership of M.N. Roy were of the opinion that the war waged by Great Britain was an anti-Fascist war and the interests of freedom and democracy demanded that the war-efforts be supported. Thus, the AITUC became a divided house. Whereas the nationalists including the communists adopted an attitude of neutrality towards the war, the radical democrats went in for an all-out support to the war efforts. Failing to sway the majority opinion in the AITUC towards their view-point, the radicals left the AITUC and established the Indian Federation of Labour in November 1941. Jamna Das Mehta became the first President of the Federation and M.N. Roy its first General Secretary. The Indian Federation of Labour tried to mobilise and win the support of the Indian working class for maintaining production and services, avoiding any disruption. In order to enable the Federation to carry on its activities the Government of India made to the Federation a monthly grant of Rs 13,000. With the patronage shown by the government, the Federation made a notable progress as is evident from Table 6. The progress was more spectacular in the provinces of Punjab, Sindh and Bengal.

The close association that the Federation developed with the Government of India and the propaganda that the Federation launched on behalf of the government did not endear it to the

TABLE 6

**Number of Trade Unions Affiliated to Indian Federation  
of Labour and their Membership (1942, 1944, 1946)**

<i>Year</i>	<i>No. of affiliated unions</i>	<i>Membership</i>
1942	193	343,423
1944	289	529,818
1946	193	450,497

dominant nationalist opinion and it suffered from the stigma of being antinational.

When Hitler attacked the Soviet Union in the summer of 1941, the attitude of the Indian communists to the war underwent a radical change. They now realised that the defeat of the Soviet Union at the hands of Hitler would not only mean the death of the only communist State in existence, but it would also spell a disaster for the forces of democracy and freedom in the world. In this respect, M.N. Roy proved to be a better interpreter and analyst of the forces then in operation. Thus, the communists also decided to support the war efforts by the beginning of 1942. The Government of India lifted the ban hitherto imposed on the Communist Party and the communist workers suffering imprisonment were released. This gave an opportunity to the Communist Party to work openly among the Indian workers. By dint of their hard labour the communists succeeded in setting up new unions and controlling many others. The inflationary spiral resulting in ever-rising prices causing enormous hardships to the workers gave them a golden opportunity to agitate for protecting the interests of the workers and win their support and sympathy.

Meanwhile, the Indian National Congress decided to launch the Quit India Movement under the leadership of Mahatma Gandhi. The Congress was convinced that both the safety of India and the successful prosecution of war efforts required that India be made free and the administration of the country be put in the hands of the real representatives of the people. The Congress failed in its efforts to secure a peaceful change. The

AICC met in August 1942 at Bombay to consider the question of launching a struggle for independence. Before any formal resolution could be adopted the government pounced upon and arrested important leaders including Mahatma Gandhi. This led to a flare-up all over the country and a sort of open rebellion against the government was started by the masses. The Government of India suppressed the movement with brutal hands. Thousands of persons were arrested and put behind the bars. The Congressmen working in trade unions also participated and organised strikes—the important strikes being at Ahmedabad and Jamshedpur. With the arrest of the Congress workers engaged in trade union activities, a heavy responsibility devolved upon the communist workers and they successfully filled in the gap. The AITUC came to be completely dominated by them. Thus, at the end of the war, there were two central federations functioning in the trade union field i.e. (a) the AITUC under the complete control of the Indian Communist Party, and (b) The Indian Federation of Labour under the domination of the Radical Democratic Party.

It is an irony of fate that the Indian trade union movement has always suffered splits when unity was most needed. It suffered its first split in 1929, just a year or two before the onslaught of Great Depression of the 1930's, which caused untold hardships to the Indian workers. Subsequently, when unity was achieved in 1940 after long-drawn persistent efforts, it immediately suffered another major split in 1941 when unity was most needed to defend the workers against rising prices and wages lagging behind. This split is said to have taken place on account of differences between one wing of the AITUC led by M.N Roy and the other led by the communists and the nationalists. It was an anti-Fascist war for one wing and imperialist for the other. Can it be said that differences were so acute as to call for a split in November 1941? It appears that by the end of 1941, the communists had come to realise that the war had assumed a different complexion. Thus, the differences between the radicals and the communists in respect of their attitude towards the war were in the process of elimination and both the view-points were coming closer when the split took place. When they established the Indian Federation of Labour in November 1941, the leaders of the Radical Democratic Party, particularly M.N. Roy, knew full well the change that was gradually taking place in the stand

of the Communist Party. Still they caused a split. Why? Ideological differences in relation to the war do not fully explain the split.

(2) *Impetus to trade union growth and increase in the number of industrial disputes*

The economic and political conditions created by the war gave a strong impetus to the trade union growth and the Indian trade union movement gained a considerable momentum during the wartime. What were the economic and political conditions created by the Second World War? In the first place, there was considerable increase in the number of industrial workers as a result of the opportunities of employment created by expansion in production to meet the needs of the war. A sort of full employment was achieved. Secondly, both prices and profits soared up because of shortage in consumers' goods and the war finance which resulted in a considerable expansion in money supply. Rising prices and wages lagging behind caused enormous hardship and suffering to the working class, providing a fertile ground for trade unions to work and agitate. Thirdly, there was a change in the attitude of the government which wanted to woo the working class and enlist the cooperation of the trade unions in increasing production. Finally, in the political field, the activation of the National Independence Movement had its effects on the trade unions which had all the time been cooperating with and participating in the struggle for freedom. The lifting of the ban from the Communist Party and release of the communist workers from prisons and detention camps, though a political measure, provided a band of enthusiastic workers for the trade unions. The competitive attitude of the AITUC and the Indian Federation of Labour helped the unionisation of many sectors of the Indian economy and stabilisation of many unions. Tables 4 and 7 give an idea of the increase in the number of trade unions during the wartime.

An analysis of Tables 4 and 7 indicates that both the number of registered trade unions and their membership more than doubled between 1938 and 1946. The gains from 1943-44 onwards were more spectacular.

TABLE 7

**Number of Registered Trade Unions and their Membership in India  
(1940-41—1946-47)**

<i>Year</i>	<i>No. of registered trade unions</i>	<i>No. of trade unions submitting returns</i>	<i>Total membership of unions submitting returns</i>
1940-41	727	483	513,832
1941-42	747	455	573,520
1942-43	693	489	685,299
1943-44	761	563	780,967
1944-45	865	573	889,388
1945-46	1087	585	864,031
1946-47	1833	998	1331,962

*Source* : Govt. of India, *Indian, Labour Year Book*, 1951-52, p. 152.

What is more important and which is not revealed by the tables is the fact that many of the trade unions became stable organisations and their financial position also improved. Many of them started owning their regular offices with paid staff of their own. Besides, the clerical and salaried workers who were hitherto untouched by the spread of trade unionism, except in the posts and telegraphs and the railways, felt the pinch of the rising prices and started organising. Many of them joined the existing unions of manual workers and others set up independent organisations. Thus, during the wartime the Indian trade union movement gained in extent as well as in intensity. The result of this massive increase in the extent and intensity of the Indian trade union movement became further visible in the number of industrial disputes which also recorded a significant rise. Though there were severe restrictions on the right to strike and strikes were illegal when the disputes were pending before adjudication authorities, still the number of work-stoppages increased manifold during the war. This is evident from Tables 5 and 8.

A study of Table 8 shows that the number of strikes and lockouts kept on steadily increasing from 1940 onwards. Simi-

larly, the number of workers involved also increased from year to year except in 1941 when it fell considerably. In 1942 it increased enormously on account of the Quit India Movement.

TABLE 8

Number of Strikes and Lockouts, Workers Involved and Mandays Lost in India (1940-1949)

<i>Year</i>	<i>No. of strikes and lockouts</i>	<i>No. of workers involved</i>	<i>No. of mandays lost</i>
1940	322	452,539	7577,281
1941	359	291,054	3330,503
1942	694	772,653	5779,965
1943	716	528,088	2342,287
1944	658	550,015	3447,306
1945	820	747,530	4054,499
1946	1629	1961,948	12,717,762
1947	1811	1840,784	16,562,666
1948	1259	1059,120	7837,173
1949	920	685,457	6600,595

*Source* : Govt. of India, *Indian Labour Year Book*, 1950-51, p. 175.

It is clear that the number of strikes and lockouts increased in spite of severe restrictions on the right to strike and the availability of an adjudication machinery. This phenomenal increase shows the desperate situation of the working class on account of shortage of consumers' goods, constantly rising prices and wages lagging behind. The workers were desperate enough to resort to strikes failing to get a redressal of their grievances, otherwise. It might also be that strikes were needed to draw the attention of the government to the economic hardships and to get the adjudication machinery moving. Table 9 indicates the extent of the fall in the standard of living of the workers during the war.

Table 9 shows that by 1945, the real earnings of workers had fallen by about 25 per cent even though the index of money earnings went up by 100 per cent. The fall in the real earnings of

TABLE 9

Index of Real Earnings of Workers in India 1939-1945  
(Base Year 1939=100)

<i>Year</i>	<i>Index of earnings</i>	<i>All India consumers' price index</i>	<i>Index of real earnings</i>
1939	100.0	100	100.0
1940	105.3	97	108.6
1941	111.0	107	103.7
1942	129.1	145	89.0
1943	179.6	268	67.0
1944	202.1	269	75.1
1945	201.5	269	74.9

workers was in the face of enormous increase in profits as is clear from Table 10.

Table 10 shows that the indices of profits in the individual industries and all industries in the country recorded an increase

TABLE 10

Index of Profits in Selected Industries in India (1940-1946)  
(Base Year 1939=100)

<i>Year</i>	<i>All industries</i>	<i>Jute</i>	<i>Cotton</i>	<i>Tea</i>	<i>Sugar</i>	<i>Paper</i>	<i>Iron and steel</i>	<i>Coal</i>	<i>Cement</i>
1940	138.0	359.1	142.5	99.1	100.3	236.3	103.8	100.8	102.8
1941	187.0	344.4	316.6	146.8	137.8	284.7	133.7	82.6	128.8
1942	221.8	351.1	491.3	228.1	126.7	321.7	110.1	80.5	169.1
1943	245.0	376.3	640.0	142.3	157.8	352.8	111.8	95.6	147.9
1944	238.9	310.6	492.1	110.5	133.5	271.5	117.8	237.0	214.4
1945	233.6	327.6	423.3	150.7	108.9	279.5	120.2	258.3	211.6
1946	229.2	415.4	408.9	198.8	122.4	266.8	101.3	198.5	194.1

Source : Govt. of India, *Statistical Abstract, India, 1950*, p. 658.

during the period 1940-1946. The most spectacular increase took place in the cotton, jute and paper industries. Although a fluctuating trend is noted in respect of other industries, the indices stood at a fairly high level as compared to those of the base year 1939. The index for all industries remained more than double the index number of the base year for all the years except 1941. The war led to a considerable improvement in the profitability of the Indian industries. Prices rose, profits expanded, costs of living increased, but real wages fell. There was no mechanism which could automatically adjust wages to the rise in the cost of living, unless the workers fought for it.

### (3) *Initiation of the practice of payment of dearness allowance and bonus*

Attempts were made to neutralise partially the effects of rising prices on workers' real earnings by the payment of dearness allowance and bonus. The textile workers of Bombay were the first to react strongly to the situation created by rising prices and scarcity of food grains and other essential commodities. They went on a general strike in April 1940 demanding an adequate dearness allowance to neutralise the rise in prices. The demand of the Bombay textile workers became the general demand of employees everywhere as prices continued to rise. The Millowners' Association, Bombay evolved a formula of adjusting dearness allowance in accordance with the rise in prices. This formula was adopted by many other employers. In some places, dearness allowance was paid according to the point by which the prices increased and, in some places, as a certain percentage of the basic wages. However, the practice of payment of dearness allowance, separate from and in addition to basic wages, became widespread and common to employees under both public and private sectors.

The practice of payment of dearness allowance which started during the Second World War has persisted till today and one does not know if it will ever end. It continues to be a bone of contention between employers and employees, which has resulted in many work-stoppages and will do so in many more cases in future. Therefore, a few comments are called for on this contentious issue.

A rise in prices, either sharp or gradual, during the Second World War took place in all countries of the world, but the employers and the trade unions made adjustments for the rise in prices by increasing the wages. In India basic wages stayed where they were and a separate payment in the form of *dearness allowance* was started. The whole idea behind the practice was that the rise in prices was going to be a temporary phenomenon and that prices would go back to the pre-war level after the war. It was thought that when the prices would touch the pre-war level at the end of the war, dearness allowance would automatically be abolished and the pre-war relationship between wages and prices would be reestablished. It is well-known that any downward revision of wages in keeping with the fall in prices is a difficult task. It was thought that the payment of dearness allowance as separate from basic wages would make the adjustment for falling prices easier.

But the prices, since then, have not fallen. The immediate post-Second World War period was not a period of falling prices as anticipated during the war, rather it was a period of an inflationary spiral. In India, the post-world war developmental expenditure and the adoption and execution of Five Year Plans of economic development have resulted in further increase in prices. Consequently, the practice of paying dearness allowance has continued. What was intended to be a wartime measure has turned out to be a permanent feature of the wage and salary structure in India. Wages and salaries are artificially divided into two main parts—*basic wage* and *dearness allowance*.

In most cases, the term *dearness allowance* has turned to be a misnomer for the payment of dearness allowance has never neutralised fully and provided only a partial compensation for the rise in prices. Immediately after the end of the Second World War, demands were voiced by persons under both public and private employments for revisions in basic wages and merger of the dearness allowance with basic wages. However, the demand has not succeeded as yet; in the recent revisions of wage-structures in many industries certain elements of existing dearness allowance have been merged with the basic wages, but the artificial division continues to exist to the detriment of the interests of the employees.

Another wartime development which has continued to pester employer-employee relations till today is the practice of the payment of bonus. With the wages lagging behind, the rise in prices

and the employers making enormous profits in spite of the imposition of new and higher taxes, such as the excess profits tax, workers started making demands for payment of bonus. Though bonuses had been paid even in the pre-war days, they were mostly occasional and sporadic. During the wartime, demand for bonus became general and widespread. Some of the enlightened employers voluntarily granted the demand but others resisted. Even those who paid held the view that bonus was an *ex-gratia* payment, that workers could not claim it as a matter of right and that a trade dispute could not arise out of a demand for bonus. Ultimately, the matter went in for adjudication wherein it was held that workers had a right to claim bonus and a dispute regarding bonus was an industrial dispute. Thus, a large number of workers received bonus from time to time during war years. This wartime development continued to operate in the post-war period also.

Next to wages, bonus has been the most important cause of industrial disputes, strikes and lockouts. There are wide differences of opinion with regard to the nature and concept of bonus. Workers and their unions have been pressing the view that bonus is a deferred wage and that workers have a claim to bonus irrespective of the extent of profits made by the employer. Courts have held that workers have a right to claim bonus out of the profit of the industry as long as their wages do not attain the level of a living wage. The controversy regarding the nature and concept of bonus was resolved with the enactment of the Payment of Bonus Act in 1965, which made the payment of a minimum bonus obligatory even in those concerns which incurred losses. However, the Payment of Bonus (Amendment) Act, 1976 has freed the concerns making losses from the obligation of paying bonus.

#### (4) *The inauguration of the practice of compulsory adjudication*

Compulsory adjudication as a method of settling industrial disputes, which is an important feature of the system of industrial relations in India today, also started as a wartime development. The concept of compulsory adjudication devolved with the need for maintaining uninterrupted production and avoiding strikes and lockouts during the wartime. Under Rule 81 of the Defence of India Rules, strikes were prohibited, but it was realised that a legal prohibition of strikes would not be effective unless it was

accompanied by measures for the settlement of industrial disputes. Thus, the Rule also provided for the compulsory adjudication of disputes between employers and employees. As soon as a dispute arose, it was referred to adjudication and its award was declared binding on the parties concerned. A strike or a lockout was illegal during the pendency of adjudication proceedings and during the period when the award was in operation. This was the first attempt at compulsory adjudication of industrial disputes in India. A number of adjudicators were appointed, some of them being high judicial officers. All types of industrial disputes were referred to them and issues of facts and law were argued before them. As a result of their decisions, a vast body of case law grew up and the country moved towards evolving a system of industrial jurisprudence.

Restrictions on the right to strike and to declare a lockout were imposed and a system of compulsory adjudication was introduced in most of the industrially advanced countries of the world during the wartime. Even such countries as Great Britain and the U.S.A., where there had been a long tradition of free collective bargaining, were not free from these restrictive measures. But soon after the end of the war, these restrictions were removed. However, contrary to what happened elsewhere, compulsory adjudication continued in India even during the post-war period and it has not left the Indian scene even today nor it is likely to do so in near future. As regards the efficacy of compulsory adjudication in maintaining industrial peace, it has to be noted that it could not eliminate strikes and lockouts even during the war as is evident from the figures relating to industrial disputes during the period (see Table 8). The persistence of strikes even during the war and in the face of compulsory adjudication shows that compulsory adjudication cannot provide a sufficient guarantee for the maintenance of industrial peace.

#### *(5) The introduction of tripartite bodies in the field of labour and industrial relations*

With a view to enlisting the active cooperation of employers, workers and their organisations in the maintenance of industrial peace and for advising the government in formulating its labour policy, the Government of India decided to set up a tripartite

machinery in 1942. The practice started with the holding of separate conferences with organisations of employers and employees. Later on, it was decided that the representatives of employers and employees and of the government should meet together to discuss problems pressing for solution. Thus, the first Indian Labour Conference was convened in Delhi in August 1942. It consisted of 22 representatives of the Central and Provincial Governments, 11 representatives each of employers and workers organisations. It was further decided that the Indian Labour Conference should meet once a year. A Standing Labour Committee was created which was to meet more often. In order to secure a wide representation of labour at the Conference, both the central federations in operation then—the AITUC and the Indian Federation of Labour were granted equal representation and a seat was reserved for the representation of unattached unions and unorganised workers. Whatever might have been the other achievements of this tripartite organisation, it did succeed in securing to the trade unions a recognised place in the life of the country.

The wartime experiment has been extended further since 1947. Many other tripartite bodies such as State Labour Advisory Boards and Industrial Committees have come into existence as the result of the experiences gained during the war and because of the needs of a planned economy.

This review of the trade union situation during the Second World War period shows that wartime experiments and experiences have left an impact of long-term duration. This impact relates mostly to: (a) expansion and stability in the trade union movement; (b) institution of the payment of dearness allowance and bonus; (c) introduction of compulsory adjudication; and (d) the setting up of tripartite bodies. It is surprising that experiences and the experiments of an abnormal time such as the war period should twist and shape the basic features of the system of the Indian industrial relations system on a permanent basis.

#### *(b) The post-Independence period*

The Second World War ended in 1945 and India became independent on August 15, 1947. The end of the war, instead of bringing any relief to the working class, further aggravated their



misery, for shortages in consumer-goods still persisted, prices continued to rise and demobilisation created serious problems of unemployment. The working class tried to protect itself by demanding wage increases and supported their demands with strikes. The result was that the number of work-stoppages, workers involved and mandays lost suddenly more than doubled in 1946 and 1947 as compared to 1945 as is clear from Table 8. The strike of the All India Postmen and Lower Grade Staff Union was the most important of the strikes of these two years. The strike began at midnight, the 10th of July 1946 and continued for more than three weeks in spite of the government's severe repressive measures and divisions in the trade union ranks.

The unprecedented increase in the number of disputes in 1946 and 1947 led to the enactment of the Industrial Disputes Act in 1947 which placed compulsory adjudication on a permanent footing. This enactment has exercised a far-reaching influence on the course and character of the Indian trade union movement. The introduction of compulsory adjudication in the sphere of industrial relations system on a permanent basis has not only made trade unions litigant, but has also prevented them from building up their organisational base. The battles for labour's cause tend to be fought for the most part in the cool corridors of the courts' buildings through pleasantries and legal arguments, rather than at factory gates.

Another piece of related legislation which would have exercised an influence of more fundamental character on the course of Indian trade union movement, had it been put in operation, was the Indian Trade Unions (Amendment) Act, 1947. This amending Act would have gone a great way towards solving the ever-recurring problems of union recognition and of determining the representative character of a union. The Act provided for compulsory recognition of a union by the employer, if the union succeeded in securing the majority of votes of the workers concerned in a plebiscite.<sup>10</sup>

By this time, the scales of salaries in the government services had become out of date because of the continuing rise in prices.

10. See Chapter 18.

Government servants also become restive and demanded revision of their salaries. Consequently, the Central Government appointed the First Pay Commission in May 1946. Most of the Provincial Governments also appointed Pay Revision Committees and the government servants, mostly ministerial staff, set up their staff associations to make representation before the Pay Revision Committees. Thus, the government servants also became organised.

From the point of view of its impact on the Indian trade union movement, the most important of the events was the establishment of the Indian National Trade Union Congress in May 1947. The divided trade union movement was further subdivided when the INTUC was set up on the initiative of Guljari Lal Nanda and other like-minded persons who believed in the Gandhian ideology. Sardar Ballabh Bhai Patel, a powerful Congress leader and an important Minister in the Central Cabinet, became its first President.

The origin of the INTUC lay in the Hindustan Mazdoor Sevak Sangh established in 1938 as a labour wing of the Gandhi Seva Sangh. Though there were frequent interruptions in the work of the Hindustan Mazdoor Sevak Sangh caused by political developments, it had come to acquire by 1946 a band of trained and dedicated workers in the various industrial centres of the country. Its hands were further strengthened when in August 1946, the Working Committee of the Indian National Congress adopted a resolution directing all Congressmen engaged in work among industrial labourers to follow the lead of the Hindustan Mazdoor Sevak Sangh. By that time, the leaders of the Indian National Congress had come to the conclusion that a separate central agency was needed to encourage, support and coordinate the efforts and activities of Congressmen working in the field of labour organisations and in the service of the labouring class. Thus, the wish expressed by the Working Committee of the Indian National Congress got its fulfilment in May 1947 when Guljari Lal Nanda, the Secretary of the Hindustan Mazdoor Sevak Sangh, convened a conference in New Delhi, which decided to establish the Indian National Trade Union Congress.

By 1945, the communists, no doubt, had come to secure an overwhelming degree of control over the AITUC. It was no

longer possible for the leaders of the Indian National Congress and for workers believing in the ideology of class-collaboration to bring the AITUC to their own view-point. Guljari Lal Nanda expressed these views when he in his letter of invitation stated:

Congressmen in general, and particularly those working in the field of labour, have found it very difficult to cooperate any longer with the Trade Union Congress which has repeatedly been adopting a course completely disregarding, or even in opposition to, the declared policy and advice of the Indian National Congress.<sup>11</sup>

Apart from the ideological clash, expediency also demanded that the Indian National Congress should set up a separate trade union centre which would function under the influence and control of Congressmen. After independence, the Indian National Congress came into power at the centre also. The leaders of the Indian National Congress, whether in the government or outside, could ill-afford to leave the trade unions under the influence of the Communist Party or other opposition parties. Sheer administrative requirements demanded that trade unions be made amenable to the influence, whether direct or indirect, of the ruling political party i.e. the Indian National Congress. Thus, partly ideological considerations and partly administrative needs dictated the formation of the INTUC in 1947.

It is to be noted here that it were the moderate leaders believing in the ideology of the Indian National Congress who walked out of the 1929 session of the AITUC and caused the first split leading to subsequent sub-divisions in the AITUC. In 1947 also, the same type of leadership seceded from the AITUC, formed a separate centre and again initiated the process of split, which culminated in the formation of the INTUC, the HMS and the UTUC, fragmenting the Indian trade union movement. The Congress leadership did not rest with the formation of the INTUC. In subsequent years, it also split the All India Railwaymen's Federation as well as the unions functioning in Indian posts and telegraphs.

Thus, the secession of unions under the control of the Congress leaders from the AITUC and the establishment of a

11. As quoted in V.B. Karnik, *op. cit.*, p. 150.

separate national centre—the Indian National Trade Union Congress, were the result of a deep cleavage between the ideologies of the Communist Party and the Indian National Congress. The clash was bound to come and the separation was inevitable.

The Indian National Trade Union Congress, partly with the support of the government both at the provincial and central levels and partly because of its earnest organising activities, soon became the most dominant of the central federations in terms of numerical strength. In 1948, the Government of India recognised it as the most representative amongst the central federations and gave to it the right to nominate workers' delegation to the ILO.

The period between August 1947 and the end of 1950 is remarkable for further sub-division in the Indian trade union movement and for the enactment of a number of protective labour legislations. The establishment of the INTUC in May 1947 heralded the process of further disintegration of the AITUC. In 1948, the socialists who had hitherto been working in the AITUC left it and established a separate national federation called the Hind Mazdoor Panchayat. After a while, the Indian Federation of Labour, which had been languishing since the end of the war and the partition of the country in 1947, merged with the Hind Mazdoor Panchayat and a new organisation—the Hind Mazdoor Sabha came into being. The process of disintegration was not to end here. At about the same time when HMS was formed, there came into existence another central organisation called the United Trades Union Congress. The UTUC comprised those unions which had left the AITUC but did not see eye to eye with the HMS, and also of some unions which formerly belonged to the Indian Federation of Labour and broke away from it when the Indian Federation of Labour merged with the Hind Mazdoor Panchayat. Thus, since 1949 there have been four central federations in existence in India i.e. (a) the AITUC—the oldest of all established in 1920; (b) the INTUC (1947); (c) the HMS (1948); and (d) the UTUC (1948). Of all these federations, the INTUC was recognised by the Government of India as the most representative on the basis of frequent verifications and checking of membership figures of these federations.<sup>12</sup>

12. See also Chapter 5, p. 136.

*See also chapter.*

The period under reference saw a further extension of trade union activities as is evident from the figures of Table 11.

**TABLE 11**  
**Number of Registered Trade Unions and their Membership in India**  
**(1947-48 – 1949-50)**

<i>Year</i>	<i>No. of registered trade unions</i>	<i>No. of trade unions submitting returns</i>	<i>Total membership of unions submitting returns</i>
1947-48	2766	1620	1,662,929
1948-49	3150	1848	1,960,107
1949-50	3522	1919	1,821,132

*Source : Govt. of India, Indian Labour Year Book, 1951-52, p. 152.*

This period also saw the growth of trade union organisations amongst salaried and clerical employees particularly in the banking and insurance companies and government services. The all-India character of the banking and insurance industries required that industrial disputes arising therein be adjudicated by all-India tribunals rather than by the tribunals appointed by the Provincial Governments. Consequently, an Ordinance was promulgated on the 30th April, 1949 to provide for the appointment of an Industrial Tribunal on an all-India basis. The Ordinance was called the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949. It was later converted into an Act. An Industrial Tribunal was appointed by the Government of India under the chairmanship of K.C. Sen. The Tribunal and the disputes referred to it had a chequered career and a long battle ensued from its award. The matter went up to the Supreme Court which set aside the award and a fresh Tribunal was constituted and it was not till 1954 that the disputes between the banking employees and their companies were finally settled through adjudication. Meanwhile, an all-India organisation of bank employees known as the All India Bank Employees' Association sprang up to represent their cases. Provincial federations were also formed and

many others were activated. Similarly, the employees of insurance companies also became active and put up their organisations.

As a result of this increase in trade union activities, there should have been an increase in the number of industrial disputes, but the Industrial Disputes Act, 1947, and the Industrial Truce Resolution adopted by the Industrial Conference of December 1947 prevented such a result. Consequently, both the number of strikes and workers involved therein declined in 1948 and 1949 as is evident from Table 8.

There was, however, a sharp increase in the number of mandays lost in the year 1950 because of one single strike i.e. the strike in the Bombay textile industry. This strike was occasioned by the refusal of the non-INTUC unions, primarily the HMS, to accept the agreement between the INTUC unions and the Bombay Millowners' Association regarding the payment of bonus. While this was the apparent cause, the main motive behind the strike was to demonstrate and protest against the recognition of the Rashtriya Mill Mazdoor Sangh, an affiliate of the INTUC, as the representative of the Bombay textile workers under the Bombay Industrial Relations Act, 1946. The strike lasted for more than two months and, though it ultimately failed, it clearly proved the "unreal character of recognition granted merely on the basis of membership roll."<sup>13</sup>

The year 1950 was also important for the countrywide campaign and protest made against the Labour Relations Bill and the Trade Unions Bill introduced in the Central legislature. As a result of these agitations, the government was forced to drop them.

Any discussion of the activities of the Indian trade union movement during this period would be incomplete without referring to international connections of the Indian trade union movement during this period. The World Federation of Trade Unions was established in 1945. The war-time collaboration that developed between the U.S.A., the U.K., France and the U.S.S.R. led to the coming closer of the trade union movements of these countries. Even while the war was going on, the British Trades Union Congress convened a world conference of the representatives of central trade union organisations of the countries fighting

13. V.B. Karnik, *op. cit.*, p. 164.

as allies on the side of the democratic countries including the U.S.S.R. The conference could not materialise because of the developments on the war front. A similar conference was convened in Paris in October 1945, and a World Federation of Trade Unions was established unifying the vast majority of workers in the world. For the first time, the American trade unions (except the American Federation of Labour which kept out of the organisation), the unions of France, Netherlands, Sweden and Soviet Union came together on a common platform. The AITUC and the Indian Federation of Labour both were affiliated to the WFTU. But this unity achieved on a worldwide scale could not last long. The initiation of the Marshall Plan in Europe led to a sharp clash of views between many unions of Western Europe and America on one side, and the unions of the communist countries, on the other. The unions of western democracies and those others holding similar views ultimately seceded from the WFTU and set up the International Confederation of Free Trade Unions in 1949 as a counterpart of the WFTU. The AITUC continued its membership of the WFTU but the INTUC and HMS joined the ICFTU. The internal divisions in the Indian trade union movement found its expression at the international level also.

As has been said earlier, the period is important for the enactment of a number of protective labour legislations. The establishment of a national government in 1947 had aroused the hopes and aspirations of the Indian working class. The Indian National Congress, which was now the ruling party, had been committed for a long time to promoting the welfare of the working class and to ameliorating their working and living conditions. Thus, a spate of legislations followed during this period. The important ones are: (a) Factories Act, 1948, (b) Employees' State Insurance Act, 1948, (c) Minimum Wages Act, 1948, (d) Coal Mines Provident Fund and Bonus Schemes Act, 1948, and (e) Coal Mines Labour Welfare Fund Act, 1947. These legislations, in spite of many imperfections in implementation, have done a positive service to the Indian working class.

## CHAPTER 5

### TRADE UNION MOVEMENT IN INDIA (1950 ONWARDS) (2)

#### Conflict and Cooperation

India was declared a sovereign democratic republic in 1950 under the new constitution incorporating a set of fundamental rights and other provisions which were of immense importance to the Indian working class.<sup>1</sup> At the same time, the country adopted planning as an instrument of its economic growth and the First Five Year Plan was introduced from April 1951. Since then, the country has already implemented four Five Year Plans. In December 1954, the Parliament accepted the 'socialist pattern of society' as the national objective of its social and economic policy. Consequently, the government declared a new industrial policy in April 1956. According to this declaration, industries were classified into three categories on the basis of the role the State would play in each of them. In the first category were placed such industries the future development of which was to be the exclusive responsibility of the State. Industries such as atomic energy, iron and steel, heavy electrical plants, coal and mineral oils, extraction and processing of ores, air transport, railway transport, ship-building and generation and distribution of electricity were included in the first category. The second category of industries was to be progressively State-owned and private enterprise was expected to supplement the efforts of the State. Industries such as machine tools, fertilisers, synthetic rubber, road transport were covered by the second

1. See Chapter 14.

category. The third category comprised all other remaining industries the development of which was in general left to the initiative and enterprise of the private sector. Thus, the Government of India accepted a pattern of mixed economy for the country in which the public sector was expected to play an increasingly important role and to shape and guide the behaviour of the private sector also in consonance with the declared national objective of establishing a socialist pattern of society.

The activities and growth of the Indian trade union movement during this period can be best appreciated in the background of these developments on the political and economic fronts of the country. All the central trade union federations of the country have provided in their respective constitutions for the gradual extension of the State-ownership of industries as one of their important objectives. Thus, the new industrial policy of the Government of India as announced in the Industrial Policy Resolution of 1956 and the acceptance of planning as an instrument of economic growth are largely in keeping with the objectives of these central federations.

It may be that the Government of India has not gone as far or is not moving as fast in the direction of achieving a socialist pattern of society as some of the trade union federations wanted it to go. However, this broad agreement on the economic policy between the government and the trade unions has placed the latter in a situation where they have to play conflicting roles. Whereas on one side, they had to cooperate with the government in achieving the national goals and objectives of speedy economic development and extending the public sector, on the other, they had also to fight with the government to safeguard and protect the Indian working class against the hardships that flowed from a defective or inadequate implementation of the policies. It is this duality in their role that has shaped the course of trade union activities from 1950 onwards. It is a period during which the trade unions have both cooperated with the government and have also opposed and fought it and the government, in its turn, has supported them and at the same time has not been reluctant to resort to coercive and repressive measures. It is a period of both conflict and co-operation between the government and the Indian trade union movement.

## Growth of Trade Unions

The trend in the rapid growth of the number of trade unions that started with the dawn of Independence in 1947 has continued unabated during this period also. This is evident from Table 12.

Though Table 12 also covers informations relating to employers' organisations registered under the Indian Trade Unions Act, 1926, still it can be taken to reflect the progress of the Indian trade union movement during the period under review because the number of employers' organisations is negligible as compared to that of the workers' organisations.<sup>2</sup>

A study of Table 12 clearly indicates that the number of registered trade unions and of those submitting returns has increased more than four times between 1950-51 and 1968. (This significant increase in the number of trade unions largely took place between 1950-51 and 1957-58, and 1963-64 and 1968.) The gains during these years have been spectacularly large as compared to those of the years 1958-59—1962-63. The big boost in the trade union membership since 1950 has coincided with the initiation of the First Five Year Plan which is itself an important landmark in the economic and industrial history of India. Between 1964 and 1967, although the number of trade unions remained fairly high, the number of unions submitting returns and their membership recorded a decline.

The total membership of the trade unions submitting returns recorded a more or less continuous increase till 1960-61. Since then, the figures have fluctuated. The percentage of women to total memberships showed a perceptible increase during 1950-51—1956-57. From then onwards, it has shown a declining trend, except for the year 1968.

## Extent of Unionisation in Different Industries

The overall story of the growth of trade unions and their membership as shown in Table 12 does not by itself give any idea of the details of the process of this growth in various indus-

2. Between 1956 and 1967, the number of employers' organisations remained on the whole less than two per cent of the total number of trade unions and their membership less than even one per cent of the total membership of the unions in the country.

TABLE 12  
Number of Registered Trade Unions (Workers' and Employers') and  
Membership of Unions Submitting Returns in India (1950-1968)

Year	No. of regd. trade unions	No. of unions submitting returns	Membership of unions submit- ting returns (in thousands)		Average membership per union submitting returns	Percentage of women to total membership	
			Men	Women			Total
1	2	3	4	5	6	7	8
1950-51	3,766	2,002	1,649	107	1,757	877	6.1
1951-52	4,623	2,556	1,847	136	1,996	781	6.8
1952-53	4,934	2,718	1,936	157	2,099	772	7.5
1953-54	6,029	3,295	1,925	176	2,113	641	8.4
1954-55	6,658	3,545	1,940	229	2,170	612	10.6
1955-56	8,095	4,006	2,034	240	2,275	568	10.6
1956-57	8,554	4,399	2,097	280	2,377	540	11.8
1957-58	10,045	5,520	2,682	332	3,015	546	11.0
1958-59	10,228†	6,040	3,255	392	3,647	604	10.8
1959-60	10,811	6,588	3,532	391	3,923	596	10.0
1960-61	11,312	6,813	3,618	395	4,013	589	9.8
1961-62	11,614	7,087	3,607	370	3,977	561	9.3
1962-63	11,817	7,246	3,334	347	3,681	508	9.4
1963-64	11,971	7,245	3,627	349	3,976	549	8.8
1964-65	13,023	7,543	4,113	353	4,466	594	7.9
1965••	13,248	6,932	3,565	223	3,788	546	5.9
1966	14,686	7,244	4,078	314	4,392	606	7.1
1967	15,314	7,523	4,197	329	4,525	602	7.1
1968	16,716	8,851	4,700	421	5,121	579	8.2

Source: Govt. of India, *Indian Labour Year Book*, 1952-53, p. 150 for figures of 1950-51; *Indian Labour Year Book*, 1965, p. 87 for figures of 1951-52 to 1963-64; *Indian Labour Year Book*, 1970, p. 94 for figures of 1964-65 to 1968.

Notes: 1. Figures in columns 4 and 5 do not always add up to those shown in column 6 since sexwise classification of members in respect of certain unions is not available.

2. Due to rounding off, totals may not necessarily tally.

†Excludes Rajasthan

\*\*Figures relate to the period April to December.

tries. Appendix 1 presents a comparative picture of the growth of trade unions and their membership along with the employment figures and their indices in selected industries for the years 1952, 1957, 1963 and 1968. It may, however, be noted that the figures of trade unions and their membership pertain only to those unions which had submitted returns under the Indian Trade Unions Act, 1926, and as such the actual number of trade unions and their membership would be still larger. The extent of the gap between the two sets of figures in particular years would depend on the number and size of unions which failed to submit returns in those years. Similarly, employment figures in the manufacturing factory establishments are based on the informations furnished by employers under requirements of the Factories Act, 1948. As some of the employers failed to submit returns in particular years, the figures of employment in those industries would be larger than those mentioned in Appendix 1. In spite of these statistical shortcomings, an analysis of the degree of unionisation has to be made on the basis of the figures in Appendix 1 as these are the only authentic data available for the present study.

The indices of the growth of employment, number of trade unions and their membership have been prepared with 1952 as the base year. Appendix 1 clearly shows that the indices of trade union membership recorded a positive rise in 1957, 1963 and 1968 over the figures of 1952 in the majority of the industries. The industries witnessing the most spectacular rise in the indices of trade union membership during the course of the years under review included: electrical machinery (317 in 1957, 1057 in 1963 and 2233 in 1968), transport equipment (126 in 1957, 741 in 1963 and 1314 in 1968), general machinery (216 in 1957, 530 in 1963 and 954 in 1968), and metal products (355 in 1957, 618 in 1963 and 627 in 1968). In these industries, the growth of employment has also been high, but in general, the rate of unionisation has been faster than the rate of growth in employment. For example, between 1952 and 1968, employment in electrical machinery increased five times, whereas the membership of trade unions went up more than 22 times. Similarly, in transport equipment, employment during the period under study recorded a moderate growth of about 100 per cent, but the figures of trade union membership increased by more than 1200 per cent.

In metal products and general machinery, the indices of employment in 1968 were 314 and 354, respectively, as against 627 and 954 being the respective indices of trade union membership in these industries. However, in some old and established industries e.g. cotton textile, jute textile, leather, and leather products, railways and posts and telegraphs, the indices of trade union membership have been very low as compared to the growth of employment. In general, the industries experiencing the highest rates of growth in trade union membership have been relatively newer and expanding industries. This is in keeping with the trends observed in other countries where the newer and developing industries have simultaneously witnessed faster unionisation.

Appendix 1 further shows that the rate of unionisation in the industries under study has widely varied and fluctuated considerably even in the same industry during these years. The industries where the growth rate more than doubled by 1957 as compared to 1952 were: metal products, electrical machinery, general machinery and paper and paper products. By 1968, the growth rate rose by more than 400 per cent in electrical machinery, transport equipment, rubber products, general machinery and paper and paper products. However, in this process of growth, the rank order of the industries on the basis of the degree of unionisation has also undergone changes. For example, leather and leather goods, which occupied the first position in 1952 from the point of view of the percentage of workers organised, was relegated to the ninth position in 1957, but it again came to rank first in both 1963 and 1968. The basic metal industry which was second in the order in 1952, ranked first in 1957, but became ninth in 1968. Chemicals and chemical products which ranked third in 1952, occupied the second position in both 1957 and 1963 and again became sixth in 1968. Cotton textile, which occupied the fourth position in 1952, became tenth in 1957, fifth in 1963, but again ranked second in 1968. Coal mining occupied the third position in both 1963 and 1968 as compared to its fifth position in 1952 and sixth in 1957. Posts and telegraphs, jute textile, transport equipment, general machinery, electrical machinery and plantations ranked low in all the years under study.

The industries experiencing a decline in trade union membership in 1957 over the figures of 1952 were: jute textile, posts and

telegraphs, railways, cotton textile and leather and leather products. In 1963 and 1968, only jute textile and posts and telegraphs recorded a fall in the trade union membership when compared to the figures of 1952. It is difficult to speculate about the factors responsible for this decline. However, perhaps the relative skill-mix of the labour force of different industries could be one such factor in terms of which growth and decline of unionisation could be explained. It would be observed that the industries with higher skill-mix have recorded a faster growth of unionisation, whereas the older industries in which the skill-mix pattern has not undergone any change or in which the skill-mix is of an inferior order, unionisation has declined. This is again in keeping with the general trend in other countries where skilled and educated workers, though late starters in the field of unionisation, have overtaken the unskilled workers.

### Statewise Picture of Trade Unions

An idea of the Statewise distribution of trade unions and their membership between 1956-57 and 1965 can be had from Appendix 2.

Appendix 2 shows that out of a total of 12,948 trade unions on register in 1965, the States of West Bengal, Maharashtra, Kerala, Madras and U.P. had 8525 unions, thus accounting for more than 62 per cent of the total number of trade unions in the country as a whole. These States have continued to account for a more or less similar percentage ever since 1956-57. If the first seven States (i.e. West Bengal, Maharashtra, Kerala, Madras, U.P., Punjab and Bihar) are taken into consideration, they together accounted for more than 75 per cent of the total number of trade unions on register in 1965. During the years preceding 1965, these seven States had roughly the same percentage of the total number of trade unions in the country.

Similarly, so far as the distribution of membership of trade unions is concerned, the first five States of Maharashtra, West Bengal, Bihar, U.P. and Madras accounted for nearly 65 per cent of the total membership of trade unions on register in 1965. During the preceding years also, the proportion of membership of trade unions in these five States of the country stood at a fairly high level. In 1965, the first seven States (i.e. Maharashtra, West

Bengal, Bihar, U.P., Madras, Delhi and Andhra Pradesh) together accounted for nearly 80 per cent of the total trade union membership in the country.

Throughout the period under study, West Bengal ranked first from the point of view of the number of trade unions on register. The undivided Bombay State occupied the second position from 1956-57 to 1958-59, but following its division into Maharashtra and Gujarat, Kerala came to rank second and continued to remain so till 1963-64. Again in 1964-65 and 1965 Maharashtra ranked second and Kerala became third. The State of U.P. occupied the fourth position and Madras ranked fifth till 1959-60, but since 1960-61, the position has reversed and Madras has outplayed U.P. relegating the latter to the fifth position.

So far as the total membership of the unions submitting returns is concerned, the undivided Bombay State continued to rank first till 1957-58. After the division also, the newly created Maharashtra State ranked first except during 1959-60—1961-62 when West Bengal, which for the most part occupied the second position, became first.

#### *Statewise distribution of the gains between 1956-57 and 1965*

The largest increase of 1102 in the number of trade unions between 1956-57 and 1965 was recorded in Kerala; the States/Union territories next in order being Bombay, i.e. Maharashtra and Gujarat (908), Madras (589), U.P. (334), Punjab (303), West Bengal (300), Mysore (240), Madhya Pradesh (210), Delhi (132), Bihar (131), Orissa (75), Assam (35), Andhra Pradesh (25), Himachal Pradesh (20), Tripura (11), Rajasthan (3), and Andaman and Nicobar Islands (2). There have been considerable fluctuations in the number of trade unions in some of the States where the figures sometimes went below even the 1956-57 mark. The States/Union territories in which the membership figures recorded a gradual increase since 1956-57 or remained fairly stable are: Bihar, Bombay (i.e. Maharashtra and Gujarat), Kerala, Madhya Pradesh, Madras, Mysore, U.P. and Delhi.

When the number of trade unions submitting returns is taken into consideration, West Bengal ranks first recording an increase of 563 unions between 1956-57 and 1965. The remaining States/Union territories arranged in order are: U.P. (372),

Andhra Pradesh (341), Bombay, i.e. Maharashtra and Gujarat (329), Punjab (274), Madras (270), Bihar (143), Delhi (133), Madhya Pradesh (100), Rajasthan (35), Himachal Pradesh (20), Orissa (16), Assam (14), Tripura (4), and Andaman and Nicobar Islands (3). It is surprising that in 1965 the States of Kerala and Mysore witnessed a loss of 346 and 14 respectively, in the number of unions submitting returns when compared to the figures of 1956-57. Appendix 2 further shows that the proportion of trade unions submitting returns to the number of trade unions on register has varied widely not only amongst various States but also in the same State during the course of the years under examination. In general, the percentage of trade unions submitting returns to those on register has been relatively higher in Bihar, Gujarat, U.P., Delhi, Orissa and Rajasthan; the percentage has been relatively lower in Andhra Pradesh, Kerala, Assam, Madras, Madhya Pradesh, Mysore and West Bengal.

From the point of view of the total gain in the trade union membership, Bombay, i.e. Maharashtra and Gujarat taken together topped the list with a gain of 470,000 in 1965 over the figures of 1956-57. The remaining States/Union territories arranged in order are: West Bengal (400,000), Delhi (174,000), Andhra Pradesh (164,000), Madras (94,000), Bihar (88,000), U.P. (79,000), Punjab (64,000), Madhya Pradesh (28,000), Orissa (25,000), Rajasthan (19,000), Assam (14,000), Himachal Pradesh (4000) and Tripura (2000). Kerala, which had added to its stock the highest number of trade unions between 1956-57 and 1965, recorded during the same period, a net decrease of 178,000 in the membership. During the period under study, Mysore and Andaman and Nicobar Islands also experienced a moderate decline in the membership by 6000 and 1000, respectively. The membership figures, as is evident from Appendix 2, considerably fluctuated from year to year in some States, particularly, Assam, Kerala, Mysore and U.P. The States/Union territories where membership figures remained relatively stable are: Bihar, Bombay, Madhya Pradesh, Madras, Punjab, West Bengal, Delhi and Tripura. No State has, however, recorded a regular increase in the membership of trade unions.

In any analysis of the growth in the membership of Indian trade unions, a very pertinent point to be borne in mind is the submission of returns by them. The returns submitted by the trade

unions form the basis for estimating the total membership. A study of the submission of returns shows that submission is very erratic and irregular, and varies from State to State. Though the percentage of unions submitting returns has been improving, still there is a big gap. A higher percentage of unions submitting returns results in augmenting the total membership and vice-versa. For example, in Kerala, out of a total number of 584 trade unions on register in 1956-57, 577 i.e. about 99 per cent submitted returns showing a total membership of 241,000, whereas in 1965, out of a total of 1686 unions on register, only 231, i.e. less than 14 per cent submitted returns indicating a total membership of only 63,000 which means a fall of 178,000.

Another important point is the size of the unions which submit returns or fail to do so. If a large union fails to submit returns, its impact on total membership is much greater even though many other small unions might have started submitting returns. Therefore, a rise or fall in the total membership of trade unions has to be properly correlated with the number and size of trade unions submitting returns. Though no discussion is possible here of the factors responsible for non-submission of returns by trade unions, the working of the administrative machinery for the collection of returns from the trade unions may also be presumed to be an influencing factor.

### **Increase in the Number of Federations**

Another notable development since 1951 in the trade union movement in India is the increase in the number of trade union federations. Table 13 gives an idea of the number of federations submitting returns, number of unions affiliated to them and their income and expenditure.

Table 13 clearly shows that there has been a considerable increase in the number as well as the affiliates of registered federations of trade unions during the period 1951-52—1968. The number of registered federations recorded a continuous increase till 1961-62 except in the years 1954-55 and 1955-56. The years 1962-63 to 1968 also recorded a slight decrease when compared to the figures of 1961-62. In 1961-62, the number of registered federations was more than three times that of the year 1951-52. Similarly, there has also been a substantial increase in the number of unions affiliated to the

registered federations. The maximum increase took place in the years 1960-61 and 1961-62, which experienced an increase of more than five times the figures of 1951-52. As the figures in Table 13 relate only to registered federations submitting returns, the number of federations functioning in the country would be still larger because many industrial federations affiliated to the national centres are not registered under the Trade Union Act, 1926.

TABLE 13

**Number of Registered Federations Submitting Returns, Number of Affiliated Unions and Income and Expenditure of Federations Submitting Returns in India (1951-52 – 1968)**

<i>Year</i>	<i>No. of federations submitting returns</i>	<i>No. of affiliated unions</i>	<i>Income (Rs. in lakhs)</i>	<i>Expenditure (Rs. in lakhs)</i>
1951-52	23	435	3.26	3.45
1952-53	29	300	3.64	3.55
1953-54	34	499	4.15	3.90
1954-55	25	307	4.42	3.92
1955-56	29	578	4.45	4.11
1956-57	37	660	4.65	5.51
1957-58	48	1587 (46)	6.14	5.76
1958-59	52	1169	6.77	6.55
1959-60	63	1450	5.68	5.83
1960-61	64	2433	6.94	6.54
1961-62	71	2356	8.55	7.96
1962-63	62	1344	5.67	5.77
1963-64	63	1497 (60)	12.45	10.46
1964-65	54	1108	7.61 (53)	6.61 (53)
1965†	47	745 (44)	4.52	4.19
1966	48	1361	11.66	10.41
1967	56	1190	9.51	8.19
1968	62	1240	9.50	8.37

*Source* : Various issues of Govt. of India, *Indian Labour Statistics*.

† Figures relate to the period April to December.

*Note* : Figures in brackets in a few cases indicate the number of federations to which the information given relates.

The increase in the number of trade union federations is a desirable development which will further get strengthened as the economy grows and the difficulties of disjointed action are appreciated by the trade unions. This trend will mitigate to a large extent the weaknesses arising out of the small average size of the Indian trade unions. Each of the national centres is trying to set up, wherever it can, industrial federations of trade unions functioning in a particular industry. As Wage Boards come to cover more and more industries, the need for unified representation on and before the Wage Boards will bring into existence an increasing number of federations of trade unions at the industry level. The functioning of other tripartite bodies at the industry level e.g. Industrial Committees will also have the same effect. By now, almost all important industries have come to have such industrial federations; though, by no means, all the trade unions operating in a particular industry have acquired affiliation to them.

When the number of unions affiliated to the registered federations is compared to that of the unions submitting returns in the country (see Tables 12 and 13), one would find that majority of the unions are unaffiliated to the registered federations. The unions affiliated to the registered federations constituted less than 20 per cent of the unions submitting returns for the most part of the period 1951-52—1968. The proportion was between 20 and 30 per cent in 1957-58, 1958-59, 1959-60 and 1963-64 and nearly 35 per cent in the years 1959-60 and 1960-61. This shows that majority of the trade unions in the country continue to be unaffiliated and function as independent units.

### Central Federations

So far as the central federations of trade unions are concerned, there has not been any major development either in the number or structure or working which needs mention in this brief review. The four central federations namely, the INTUC, the AITUC, the HMS and the UTUC have continued to maintain their relative positions as is evident from Table 14. The figures of affiliated unions and their membership as given in Table 14, however, do not tally with the figures as claimed by the centres themselves. The figures in Table 14 have been arrived at by the Central Government after verification and enquiry.

Table 14 shows that the figures of both the number of affiliated trade unions and their membership in respect of all the central federations, particularly, HMS and UTUC, have fluctuated during the course of years under study. However, none of the central federations could add materially to the number of affiliated unions or their membership during the period 1953 to 1962-63. On the contrary, the period 1953—1962-63 witnessed a decline in both the number of affiliated trade unions and their membership as compared to the figures of the preceding period 1949-1952. Only in 1966, the INTUC and the HMS could add a significant number in the membership. In particular, the position of the HMS, in terms both of the number of affiliated unions and their membership, considerably deteriorated from 1953 onwards. In 1962-63, the HMS had less than half the number of affiliated trade unions and their membership when compared to the figures of 1952. The maximum decline took place in 1957-58 when the membership went down to less than one-fourth the figures of 1952. Similarly, in 1957-58 the UTUC lost more than 3 lakhs members when compared to the membership figures of 1952. In 1962-63, the membership of the unions affiliated to the UTUC was less than one-third of the membership recorded in 1952. The maximum loss incurred by the AITUC was in the year 1953 when it lost more than 5 lakhs members and 400 affiliated trade unions over the corresponding figures of 1952. However, from 1955-56 onwards, the AITUC has continued to maintain its position.

Table 14 further shows that, excepting the year 1957-58 and 1959-60, the INTUC accounted for the largest number of affiliated trade unions as well as their membership. The number of trade unions affiliated to the INTUC varied between 37 per cent (1949) and 46 per cent (1962-63) of the total number of trade unions affiliated to the central federations. As regards membership, the position of the INTUC improved from 1953 reaching the height of nearly 60 per cent in 1966. The AITUC slightly improved its position from 1954-55 in terms of percentage of the affiliated unions. The percentage has varied between 26 (1953) and 43 (1957-58). In terms of membership, the position of the AITUC varied between 13 per cent (1953) and 31 per cent (1957-58). The position of the HMS, in terms of the percentage of both the number of unions affiliated to it and their membership, consider-

TABLE 14

## Membership of Central Federations of Trade Unions in India (1949-1968)

Year	INTUC		AITUC		HMS		UTUC		Total	
	No. of affiliated unions	Member-ship	No. of affiliated unions	Member-ship	No. of affiliated unions	Member-ship	No. of affiliated unions	Member-ship	No. of affiliated unions	Member-ship
1949	847	1,023,117	754	741,035	419	679,287	254	331,991	2274	2,775,430
1950	1,043	1,431,878	722	730,636	460	698,720	306	366,401	2531	3,227,635
1951	1,232	1,548,568	736	758,314	517	804,337	332	384,962	2817	3,496,181
1952	913	1,268,606	736*	758,314*	574	804,494	201	223,292	2424	3,054,706
1953	587	919,258	334	210,914	220	373,459	154	129,242	1295	1,632,873
1954-55	604	930,968	481	306,963	157	211,315	228	195,242	1470	1,644,488
1955-56	617	971,740	558	422,851	119	203,798	237	159,109	1531	1,757,498
1956-57	672	934,385	N.A.	N.A.	119	233,990	N.A.	N.A.	—	—
1957-58	727	910,221	807	537,567	151	192,948	182	82,001	1867	1,722,737
1958-59	886	1,023,371	814	507,654	185	241,636	172	90,629	2057	1,863,290
1959-60	860	1,053,386	886	508,962	190	286,202	229	110,034	2165	1,958,584
1962-63	1,219	1,268,339	952	500,967	253	329,931	241	108,982	2665	2,208,219
1966	N.A.	1,417,533	N.A.	433,564	N.A.	436,977	N.A.	93,454	—	2,381,548
1968	N.A.	1,326,152	N.A.	634,802	N.A.	463,772	N.A.	125,754	—	2,550,480

\* The figures for 1951 and 1952 are the same on account of the fact that the figures for 1952 were reported to be not available.

Note: The figures up to 1953 are compiled from the statistical information supplied by the organisations. The figures from 1954-55 onwards are as verified by the Chief Labour Commissioner, Govt. of India.

ably deteriorated during the period 1953—1962-63 as compared to the preceding period 1949-52. In 1957-58, the HMS accounted for only 8 per cent of the total number of unions affiliated to the federations; the maximum of 24 per cent on record was in 1952. The membership of the unions affiliated to the HMS varied between 12 per cent (1955-56) and 26 per cent (1952). The UTUC has ranked last (except in 1954-55 and 1955-56) in terms of the percentage both of the number of affiliated unions and their membership. In 1968, their position in terms of the membership of unions affiliated to them over the figures of 1966 improved in the case of all the central federations except the INTUC.

The INTUC continues to be the most dominant of the four national centres from the point of view of the number of affiliates as well as membership. As such, it still continues to recommend the names of workers' delegation to the International Labour Conference.

Besides these four central federations, the Bhartiya Jan Sangh has set up a central federation of trade unions under its domination and influence. This federation is called Bharatiya Mazdoor Sangh which has been seeking to extend its area of influence but without much success. There is no particular industry or any particular area which can be said to have come under its influence. The political character of the Jan Sangh is the main impediment in the growth of its trade union wing.

Some independent trade unions met at Patna on March 21, 1964 and decided to establish the All India Independent Trade Unions Congress, but this effort to unite the unaffiliated trade unions has not succeeded and the newly formed Congress met an early death.

Further, the split in the Communist Party of India has also led to a split in the AITUC. The leaders and followers of the Communist Party of India and the Communist Party (Marxists) endeavoured to work together on the platform of the AITUC for a few years in spite of their political split. However, in 1970 the unions under the influence of the CPM seceded from the AITUC and formed a centre of their own known as the Centre of Indian Trade Unions. The competition between the AITUC and the CITU to extend their control and domination continues but the AITUC has not suffered a very significant loss in this process.

The split in the Indian National Congress in 1969 also caused split in the INTUC. The trade unions under the influence of such leaders as Morarji Desai, Nijalingappa, Kamraj and others seceded from the INTUC and established a centre which came to be called the National Organisation of Labour. The gradual fading away of the political importance of these leaders has caused the disintegration of the NOL. However, the Ahmedabad Textile Labour Association, the foundation on which the structure of the INTUC was raised, has broken away from it and is maintaining an independent existence.

### **International Affiliations**

The international affiliation of the national centres has also continued to be the same as in the pre-1950 period. The INTUC and the HMS continued to be affiliated to the ICFTU and the AITUC to WFTU. Fraternal delegates have been exchanged between the national centres in India and trade unions in other countries according to their political affiliations. The Trade Union College set up by ICFTU has been actively engaged in providing training to trade union leaders from its affiliates from India and other Asian countries.

### **Impact of the Growth on Trade Union Policy and Action**

It has been stated earlier that the Indian trade union movement since 1950 has been faced with a dilemmatic situation. It has been torn between the opposite roles of conflict and cooperation with the government. There has been a clash of loyalties—loyalty to the cause of planning and economic development, on one side, and, on the other, to the interests of the workers as and when they suffer in the process of the same economic development. Whereas the acceptance of planning, and the needs of economic development demand active cooperation and support of the trade unions, the rising costs of living and the resultant hardships to the working class goad them in the direction of conflict and strikes. The question of evolving a sound programme of action, tactics and strategy under these conditions has been such as to defy an easy solution. An index of this problem and the way the Indian trade unions, in general, have sought to answer this question is the 'two-pillar' policy as adopted by the 25th session of the AITUC

held in Ernakulam in December, 1957. S.A. Dange, the then General Secretary of the AITUC, spoke of this policy in the following words:

At the same time, we have to see that all this development taking place is not at the cost of the working people. Hence we have to follow a two-pillar policy to help in the development of the economy and to defend the interests of the working masses in that economy.

The 'two-pillar' policy has been pursued by all important central trade union federations, their affiliates and other trade unions, though they might not have accepted it in so many words. All of the trade unions have fought and opposed the employers and the government, though in varying degrees, whenever the interests of the workers have been adversely affected by their policies and programmes. At the same time, they have extended their hands in willing cooperation whenever such cooperation has been sought in the task of easing the tensions in the field of industrial relations and in evolving the government's labour policy. This will be evident from a study of the nature and extent of industrial disputes and the working of the various consultative machineries during the period under review.<sup>3</sup>

### **Industrial Disputes During 1950-70**

Industrial disputes during the period 1950 onwards, as is evident from Table 15, have followed two patterns—one between 1951 and 1954 and the other between 1955 and 1970. As regards the first, the trend of the fall in the number of industrial disputes which started in 1948 (see Table 8) continued up to 1954 with minor reversions in 1951 and 1952. This was also reflected in the number of mandays lost except for 1950. The years 1951-54 are the years which have recorded the lowest number of mandays lost (except for 1963) in the history of industrial relations in the country since the Second World War. The second pattern started in 1955 when industrial disputes again started increasing and the pattern has continued up to 1970. The year 1953 recorded the lowest number of industrial disputes, the number being 772. In 1955, it went up to

3. See also Chapter 12.

TABLE 15  
 Number of Industrial Disputes Resulting in Work-stoppages; Workers Involved and Mandays Lost in India;  
 Frequency and Severity Rates and Index of Industrial Unrest for Manufacturing Sector Only (1950-1970)

Year	No. of disputes	No. of workers involved	No. of mandays lost	Manufacturing sector only		
				Frequency rate	Severity rate	Index of indus- trial unrest Base year 1951=100
1950	814	719,883	12,806,704	—	—	—
1951	1071	691,321	3,818,928	0.105	424	100
1952	963	809,242	3,336,961	0.092	310	73
1953	772	466,607	3,382,608	0.071	383	90
1954	840	477,138	3,372,630	0.084	400	94
1955	1166	527,767	5,697,848	0.094	563	133
1956	1203	715,130	6,992,040	0.097	597	141
1957	1630	889,371	6,429,319	0.097	400	94
1958	1524	928,566	7,797,585	0.088	414	97
1959	1531	693,616	5,633,148	0.086	421	99

1960	1583	986,268	6,536,517	0.093	533	129
1961	1357	511,860	4,918,755	0.094	421	99
1962	1491	705,059	6,120,576			
1963	1471	563,121	3,268,524			
1964	2151	1,002,955	7,724,694			
1965	1835	991,158	6,469,992			
1966	2556	1,410,256	13,846,329			
1967	2815	1,490,346	17,147,951			
1968	2776	1,669,294	17,243,670			
1969	2627	1,826,846	19,048,288			
1970	2889	1,827,752	20,563,381			

Source : Govt. of India, *Indian Labour Year Book, 1952-53* (p. 164) for figures of 1950; and various issues of *Indian Labour Statistics* for figures of 1951-1970.

Notes : 1. The above statistics cover all sectors of economic activity and relate to Part "A" States, Ajmer and Delhi up to 1956. The coverage of the statistics changed radically due to reorganisation of States in 1957 and hence a line has been drawn between 1956 and 1957.

2. Frequency rate is the ratio of number of industrial disputes to one lakh of mandays scheduled to work.
3. Severity rate is the ratio of total mandays lost due to industrial disputes to one lakh of mandays scheduled to work.
4. The index number of industrial unrest is the percentage of ratio of mandays lost to mandays scheduled to work for the given year as compared to the similar ratio for the base year 1951=100.

1166 and 1967 recorded the maximum of 2815 disputes. Similarly, the frequency rate for manufacturing sector which came down to 0.071 in 1953 started going up from 1955 when it went to 0.094 reaching a maximum of 0.097 in 1956 and 1957. Thus, the trend of increase in the number of industrial disputes became visible by the end of the First Five Year Plan and the beginning of the second.

Though there might be numerous local factors giving rise to industrial disputes at various places and various industries, it is beyond doubt that the new trend was the result of the overall developments on the economic front of the country. The initiation of the process of a planned economic development of the country in 1951 and the consequential increase in investment and money supply created a situation where consumers' goods became scarce and prices started rising. The working class began feeling the pinch in the form of rising costs of living. The strength that the Indian industrial workers have acquired in the shape of the increase in the number of trade unions and their membership has been fully brought to bear upon the scene of industrial relations in order to protect the legitimate interests of the workers.

The Indian trade unions as the representative of the Indian working class, though they have welcomed and accepted planning and industrial development, could not remain silent in the face of the mounting sufferings of the industrial workers. They had to protect the interests of their members and others who looked up to them as their mouth-piece and resorted to work-stoppages when other methods of obtaining a redressal of their grievances failed. Even the Industrial Disputes Act, 1947, with all its restrictions on the right to strike and the availability of a machinery for conciliation and compulsory adjudication, could not deter the working class from resorting to strike—the last weapon in the armoury of the workers. If an analysis is made, it would appear that most of these strikes have been illegal either under the Industrial Disputes Act, 1947 or the Essential Services Maintenance Act, 1968 or relevant State legislations wherever in operation. Even the penal clauses of the Acts regarding the consequences of going on illegal strikes failed to prevent the workers and their trade unions from using the weapon of strike in their defence.

The Indian masses still continue to groan under ever rising prices. Therefore, there has been no material reversal of the trend

of increase in the number of disputes. The Chinese Aggression of 1962 and the resultant declaration of national emergency and the Pakistani invasions of 1965 and 1971 only temporarily stemmed the tide of the rising working class resentment.

### **Statewise Picture of Industrial Disputes**

The foregoing paragraphs present a picture of the state of industrial disputes in the country as a whole. A closer look on the State-wise picture is called for and, at the same time, it is essential to have a comparative analysis of the State-wise figures of industrial disputes and trade union membership. Appendix 3 read along with Appendices 2 and 4 gives this comparative picture.

An analysis of these appendices reveals that the States which occupy a higher position in terms of number of trade unions and average annual trade union membership are also the States which account for the higher average number of industrial disputes, and the average number of workers involved per year.

If the States were arranged in a ranking order in terms of the number of trade unions and membership, on the one hand, and the number of industrial disputes and workers involved, on the other, there is striking correspondence in the two positions as is evident from Appendix 4. It is but natural that the areas with a greater concentration of trade unions and larger trade union membership should also account for a larger number of disputes and mandays lost. One striking exception appears to be the State of Kerala, which occupies the eighth position in terms of trade union membership, but is the fourth State from the point of view of the number of industrial disputes and workers involved. However, this contrast can be easily explained in terms of the extent of politicalisation of the organised workers of Kerala as also in terms of the extent of unionisation for, though Kerala is a small State from the point of view of population, the degree of unionisation is also very high (second in the country).

The States of Maharashtra, West Bengal, Madras and Kerala account for about 64 per cent of the total trade union membership in the country and, at the same time, they account for more than 75 per cent of the total mandays lost on account of industrial disputes. Thus, it is evident that the extent of unionisation and

the extent of disturbances in industrial relations have a positive correlation.

### Trade Union Cooperation and Consultative Machinery

Of the two-pillars of the trade union policy pursued during recent years, one having been discussed in the preceding few pages, the other pillar also needs further discussion. It has been said that the other pillar of the trade union policy is to help in the development of the economy. The pursuance of this policy has drawn both the government and the trade union movement closer. The government, employers and the trade unions, conscious as they are of this responsibility, have established a number of tripartite and bipartite bodies of consultation and cooperation at different levels.

For the purpose of convenience these bodies may be classified under two heads: (a) non-statutory and, (b) statutory. They may further be sub-divided on the basis of levels at which they operate and their nature i.e. whether permanent or temporary. A list of more important of such bodies is given below. Some of these bodies, though they came into existence during the 1940's, have been further strengthened and more frequently utilised in the post-1950 period. Again, though most of these bodies are advisory and consultative, some of them particularly the statutory ones are vested with executive and administrative functions.<sup>4</sup>

#### I. Non-statutory (permanent)

##### (a) at the Central level:

1. Indian Labour Conference
2. Standing Labour Committee
3. Central Implementation and Evaluation Committee
4. Central Committee on Labour Research
5. Central Board for workers' Education
6. Standing Committee on Industrial Truce Resolution

##### (b) at the State level:

1. State Labour Advisory Boards

4. See also Chapter 12..

2. Industrial Relations Committees in some States such as Kerala

(c) at the industry level:-

Industrial Committees for important industries e.g. plantations, coal mining, cotton textiles, cement, tanneries and leather goods manufactories, mines other than coal, jute, building and construction, chemicals, iron and steel, engineering and road transport

(d) at the plant level:

1. Joint Management Councils
2. Production Committees
3. Joint Committees

II. Non-statutory (ad hoc):

1. Wage Boards
2. Bonus Commission

III. Statutory:

(a) at the Central level:

1. Dock Workers' Advisory Committee under the Dock Workers Regulation of Employment Act, 1948
2. Central Minimum Wages Advisory Board under the Minimum Wages Act, 1948
3. Employees' State Insurance Corporation, Standing Committee, Medical Benefit Council under the Employees' State Insurance Act, 1948
4. Coal Mines Labour Housing Board and Coal Mines Labour Welfare Advisory Committee under the Coal Mines Labour Welfare Fund Act, 1947
5. Mica Mines Labour Welfare Advisory Committee under the Mica Mines Labour Welfare Fund Act, 1946

- |                         |  |
|-------------------------|--|
| (b) at the State level: | <ol style="list-style-type: none"> <li>1. Minimum Wage Advisory Boards, Committees and Sub-committees under the Minimum Wages Act, 1948</li> <li>2. Regional Boards under the Employees' State Insurance Act, 1948</li> <li>3. Labour Welfare Boards under Labour Welfare Fund Acts</li> </ol> |
| (c) at the Plant level: | <ol style="list-style-type: none"> <li>1. Works Committees under Industrial Disputes Act, 1947</li> </ol>  |

These bodies have provided the main forums of cooperation and consultation between the trade unions, employers and the government in evolving agreed labour policies and solving particular problems as and when they arise. Though some of these bodies pre-date 1950, all of them have become more active in the post-1950 period. What needs to be emphasised here is not so much the formal creation and existence of tripartite and bipartite bodies of consultation and cooperation, but the new orientation in the outlook of the trade unions and the government in the direction of mutual cooperation. This orientation would not have taken place but for the acceptance of the broad national goals in the field of economic development by the trade unions. Again, but for this reorientation, the industrial relations' scene would have become much more turbulent under the stresses and strains generated by the attempt at squeezing into a few decades the process of economic development, which has taken centuries in the capitalist countries.

All the Five Year Plans have emphasised the need for workers' cooperation. If any one goes into the detailed working of the bodies mentioned earlier, he will be convinced that the Indian working class represented by the trade unions has magnificently responded to this call. If there have been occasional voices and actions of protest, they have occurred mostly when the trade unions have been convinced that their hardships arise not so much on account of the broad national goals as because of the faulty and wrong policies pursued by the employers and the government in the process of attaining these goals.

This is a brief summary of the developments of the trade union front since 1950, but it contains the main events and the main

trends. After this review of the origin and growth of the Indian trade union movement, it is now necessary to discuss some of the main problems and issues confronting it today. These problems have been discussed in the next four chapters under the heads: (1) Size and Finance; (2) Structure and Government; (3) Relationship with Political Parties and Leadership; and (4) Rivalry and Recognition.

## CHAPTER 6

### SIZE AND FINANCE OF INDIAN TRADE UNIONS

#### SIZE

An idea of the size of the Indian trade unions can be had from a look at their average membership figures. A few of the trade unions are big in size, but most of them are extremely small. Consequently, the average size is very small and becomes smaller and smaller as unionisation spreads.

#### Average Membership

The average membership per union has been going down from year to year since 1927-28, except for occasional reversals in the trend. This is evident from Table 16.

A study of Table 16 along with Tables 4, 7 and 12 shows that the total membership of the trade unions has been gradually increasing since 1930-31, but side by side, the average membership has been declining. In 1968, the average membership per union was less than one-sixth of the average membership recorded in 1927-28. Similarly, the average membership per union during the period 1932-33—1948-49 was nearly twice that of the period 1949-50—1968.

#### Frequency Distribution of Trade Union Membership

An analysis of figures in Table 17 shows an overwhelming preponderance of the small-sized unions. In both 1956-57 and

1964-65, unions having a membership of less than 500 constituted more than 80 per cent of the total unions, whereas those with a membership of 2000 and above accounted for about 4 per cent only. The rest having a membership of 500 and above but less than 2000 constituted 14.3 and 13.5 per cent of the total number of unions in 1956-57 and 1964-65, respectively. Though the figures relate only to the years 1956-57 and 1964-65, there has not been any material variation in the frequency distribution from year to year.<sup>1</sup>

TABLE 16

Average Membership per Union (Submitting Return) in India  
(1927-28—1968)

<i>Year</i>	<i>Average membership per union</i>	<i>Year</i>	<i>Average membership per union</i>
1927-28	3594	1952-53	772
1932-33	1615	1953-54	641
1937-38	1137	1954-55	612
1938-39	1013	1955-56	568
1939-40	1136	1956-57	540
1940-41	1064	1957-58	546
1941-42	1260	1958-59	604
1942-43	1401	1959-60	596
1943-44	1387	1960-61	589
1944-45	1552	1961-62	561
1945-46	1480	1962-63	508
1946-47	1353	1963-64	549
1947-48	1026	1964-65	594
1948-49	1061	1965	546
1949-50	949	1966	606
1950-51	877	1967	602
1951-52	781	1968	579

*Source* : Govt. of India, *Indian Labour Year Book*, 1951-52, p. 152 for figures up to 1950-51; *Indian Labour Year Book*, 1965, p. 87 for figures of 1951-52—1963-64; *Indian Labour Year Book*, 1970, p. 94 for figures of 1964-65 onwards.

1. See relevant issues of Govt. of India, *Trade Unions in India* and *Indian Labour Year Book*.

TABLE 17

Frequency Distribution of Indian Trade Unions Submitting Returns According to Membership  
(1956-57 and 1964-65)

Membership of unions	1956-57			1964-65		
	Unions		Membership at the end of the year	Unions		Membership at the end of the year
	Number	% to total number	Number	% to total membership	Number	% to total membership
Below 50	978	22.2	30,918	1.3	1733	23.0
50 to 99	736	16.7	54,405	2.3	1538	20.5
100 to 299	1492	33.9	240,120	10.1	2233	29.7
300 to 499	375	8.5	141,662	6.0	670	8.9
500 to 999	406	9.2	310,572	13.0	696	9.3
1000 to 1999	224	5.1	299,170	12.6	314	4.2
2000 to 4999	130	3.0	419,647	17.7	204	2.7
5000 to 9999	30	0.7	202,934	8.5	70	0.9
10,000 to 19,999	12	0.3	158,283	6.7	32	0.4
20,000 and above	16	0.4	519,051	21.8	29	0.4
Total	4399	100.0	2,376,762	100.0	7519	100.0
					4,466,282	100.0

Source : Govt. of India, *Trade Unions 1956-57*, p. 16 for figures of 1956-57 and *Report of the National Commission on Labour, 1969*, p. 279 for figures of 1964-65.

\* Though 7543 unions submitted returns, membership figures were available for 7519 unions only.

Though in both 1956-57 and 1964-65, the unions having less than 500 members constituted more than 80 per cent of the total number of trade unions, their contribution to total membership was only 19.7 in 1956-57 and 18.2 per cent in 1964-65. The unions with a membership of 2000 and above, in spite of the fact that they constituted about only 4 per cent of the total number of trade unions in both 1956-57 and 1964-65, accounted for over 54 and 61 per cent of the total membership in the respective years. The frequency distribution of membership has also not materially changed from year to year. Thus, it is evident that the vast bulk of the trade unions is small-sized, but the vast bulk of total membership is concentrated in the large-sized unions whose number is comparatively small. Here, one point to be borne in mind is that what has been called large-sized in the Indian context will look tiny and small when compared to the giant unions of the U.S.A. and Great Britain where membership in particular cases runs into a million or more. Some of the pertinent factors responsible for the average size of the Indian unions being small and its becoming still smaller are discussed below.

### **Factors Responsible for the Small Size**

The first and the primary factor responsible for the decline in the average size of the Indian trade unions is the structure of the trade union organisation in the country. The primary unit of union organisation in the overwhelming number of cases is the factory or the unit of employment. This has been the historical foundation of the structure of the Indian trade unions. Industrial unions covering employees in the industry as a whole are a rare phenomenon. Consequently, whenever employees in a particular factory, mine, or, as a matter of fact, any business establishment are organised, a new union is formed. It is well known that unionisation in India, as everywhere else, started with the big employers and gradually spread to smaller employers and the process continues till today. It is this process of unionising the smaller and smaller units of employment that has pulled down the average membership.

The second factor explaining the decline in the average membership is the average size of the factories from the point of view

of number of persons employed, which is also very small. Though the frequency distribution of the Indian factories on the basis of the number of workers is not available, an idea of the average size of the factories can be had by dividing the total number of average daily employment by the number of factories. In 1967, the total number of factories submitting returns was 67,582 and the total average daily employment was 4,760,000. The average number of workers employed per factory comes approximately to 70. If this be the average size, it is not surprising that the average membership of trade unions has been going down as more and more factories are unionised. What is true of factories is true of most other industrial establishments. Thus, the average size of the union would continue to become smaller and smaller in the future also as the extent of unionisation increases, unless the primary unit of unionisation is changed. The average size of the Indian trade unions, when read with the average size of the Indian factories, clearly shows that unionisation is still confined to the workers of the bigger employers only. This also reveals the ground that the trade unions have still to cover.

Finally, the multiplicity of rival unions is also a contributing factor. On one side, the average size of the factory is small, on the other, rival unions start operating in this very small factory. The increasing number of unions may mean that fresh areas are being organised, but it may also mean that the already organised are being split into new unions. The number of unions increases but the total membership does not increase proportionately. If rivalry could be removed, the average size of the trade unions could also go up.

### **Consequences of the Small Size of the Trade Unions**

The most important consequences of the average size of the Indian trade unions being small are: (a) their inability to engage in effective collective bargaining; and (b) their extremely poor financial position.

An important consequence of the small size of the large bulk of trade unions in India is their helplessness in engaging in any effective collective bargaining. Most of the unions are incapable

of undertaking any independent individual action against their employers. Even small unions could have been able to take effective action against their predominantly small employers, had they been able to unionise an overwhelmingly large percentage of workers under such employers. But the small degree of unionisation further aggravates their helplessness in collective bargaining and makes them thoroughly dependent either on the political parties or on such important personalities who happen to command political influence on the employers and the government machinery.

The other important consequence of the size of the Indian trade unions being small is the pitifully poor financial position of the average union.

FINANCE

### Income and Expenditure

An idea of the income and expenditure of workers' trade unions from 1951-52 to 1968 can be had from Table 18.

A study of Table 18 shows that the average annual income of an Indian trade union has been around Rs. 2000. The highest annual income during the period under study attained in 1968 was Rs. 3910 and the lowest record in 1956-57 was Rs. 1830. Even this small average income hides the reality of the situation, wherein the overwhelmingly large percentage of the trade unions is much below the average. If the figures of the average income per member (worked out from Tables 18 and 12) are studied along with the frequency distribution of trade unions (see Table 17), it will be evident that the majority of the Indian trade unions have an annual income much below Rs. 2000. For example, in 1956-57 more than 80 per cent, and in 1962-63 nearly 75 per cent of the Indian trade unions had an annual income less than Rs. 2000. In 1956-57 more than 20 per cent of the unions had an annual income of less than Rs. 200. A more or less similar situation prevailed in 1964-65 also.

An idea of the expenditure pattern of the Indian trade unions can be had from Table 19.

Table 19 clearly shows that salary, allowances and establishments i.e. the cost of running the office alone accounts for more than

40 per cent of the expenditure of trade unions in India. Similarly, the miscellaneous expenditure again fluctuates around 40 per cent. In contrast, the expenditure on trade disputes rarely goes above 6 per cent, and on publications of periodicals, hardly more than one per cent. The expenditure on welfare activities, such as funeral, old age, sickness and unemployment benefits and educational and social items, rarely forms 5 per cent of the total expenditure.

TABLE 18

Income and Expenditure of Workers' Registered Trade Unions in India  
(1951-52-1968)

Year	No. of unions submitting returns	Income (Rs. lacs)	Expenditure (Rs. lacs)	Average income per union (Rs. 000's)
1951-52	2509	50.84	45.32	2.02
1952-53	2690	52.05	45.43	1.93
1953-54	3238	59.76	52.17	1.85
1954-55	3535	66.31	57.19	1.88
1955-56	3970	82.94	65.06	2.09
1956-57	4390	80.17	71.81	1.83
1957-58	5470	102.88	92.62	1.88
1958-59	5802*	124.92	116.55	2.15
1959-60	6494	154.09	134.65	2.37
1960-61	6717	153.09	139.55	2.28
1961-62	6954	171.13	151.34	2.46
1962-63	7114	174.61	157.87	2.45
1963-64	7106	195.23	168.18	2.75
1964-65	7380	235.82	203.06	3.19
1965**	6771	167.82	149.66	2.48
1966	7086	256.74	221.00	3.62
1967	7381	283.82	253.31	3.85
1968	8689	340.11	303.56	3.91

Source : Govt. of India, *Indian Labour Statistics*, 1964, p. 105 for figures of 1951-52 to 1954-55; *Indian Labour Statistics*, 1968, p. 181 for figures of 1955-56 to 1963-64; *Indian Labour Year Book*, 1970, p. 104 for figures of 1964-65 onwards.

\*Excluding Rajasthan.

\*\*Figures relate to the period April to December.

The analysis of the income and expenditure pattern of the Indian trade unions reveals their poverty. The poor financial position adversely affects their entire functioning, whether it be

TABLE 19

**Percentage Distribution of Expenditure of Workers' Unions in India  
(1956-57—1962-63)**

<i>Items of expenditure</i>	<i>1956-57</i>	<i>1957-58</i>	<i>1958-59</i>	<i>1959-60</i>	<i>1960-61</i>	<i>1962-63</i>
1. Salaries, allowances etc. of officials	20.2	20.4	18.6	19.5	20.7	18.9
2. Expenses of establishments	22.1	21.5	23.3	26.3	23.1	25.6
3. Expenses in conducting trade disputes	5.9	4.5	5.5	4.8	4.6	4.0
4. Compensation to members for loss arising out of trade disputes	0.7	0.9	0.9	1.1	1.4	1.1
5. Legal expenses	4.0	4.8	5.4	6.0	5.8	5.0
6. Funeral, old age, sickness and unemployment benefits	2.4	2.6	3.0	2.6	2.6	2.7
7. Educational, social and other benefits	2.8	2.1	1.7	1.8	1.8	2.6
8. Cost of publishing periodicals	1.8	1.5	1.0	1.4	1.4	1.6
9. Auditor's fees	0.7	0.7	0.6	1.2	0.7	0.7
10. Miscellaneous	39.4	41.0	40.0	35.3	37.9	37.8

*Source :* Various issues of Govt. of India, *Trade Unions in India*.

in the field of welfare activities for their members or their bargaining power, the conduct of strikes or industrial disputes or publishing journals or organising their publicity materials, not to speak of developing research activities in order to strengthen their working. They can neither undertake any bold organisational drives nor are they able to withstand any serious strains caused on account of industrial disputes. No body can expect such unions to have a full-time competent and adequate salaried staff. Under these conditions, the availability of an outside leadership, which is not wholly dependent on any particular trade union for its livelihood and is still whole-heartedly devoted to the trade union movement, becomes not only desirable but is a boon for the movement.

## Sources of Income

An idea of the sources of income of Indian trade unions can be had from Table 20.

TABLE 20

Percentage Distribution of Sources of Income of Workers' Unions in India  
(1956-57—1962-63)

Sources of income	1956-57	1957-58	1958-59	1959-60	1960-61	1962-63
1. Contributions from members	72.0	70.0	69.1	72.2	74.4	71.2
2. Donations	15.9	18.1	20.3	17.7	16.0	16.5
3. Sale of periodicals etc.	0.5	0.4	0.4	0.5	0.3	0.4
4. Interest on investment	0.9	0.6	0.7	1.0	0.7	1.4
5. Miscellaneous	10.7	10.9	9.5	8.6	8.6	10.5

Source : Various issues of Govt. of India, *Trade Unions in India*.

Table 20 clearly reveals that the primary source of income of Indian trade unions is the membership fee, which is but natural. Contributions from members and donations account for nearly 90 per cent of the total income of trade unions in India. Income derived from other sources i.e. sale of periodicals and interest on investment, etc. is more or less negligible.

A perusal of Table 18 will show that the average annual contribution of a member to his union fund varies between Rs. 3 and Rs. 5. If one studies these figures along with the average annual earnings of workers in the manufacturing industries, one will find that, on the average, an Indian worker contributes around 0.33 per cent of his annual earnings to the financing of his trade union. If donations to trade union funds be excluded the contribution by members through their membership fees would hardly be 0.25 per cent of their annual earnings. The average weekly contribution by a member of a British trade union is between 1 and 1.5 per cent of the average weekly wage.<sup>2</sup>

2. J. Henry Richardson, *An Introduction to the Study of Industrial Relations*, p. 179.

A union of poor workers can rarely be expected to be rich. Therefore, it is obvious that, living as they do in exceedingly poor conditions, it is extremely difficult for the Indian workers to spare more for trade union funds. Still, unless the workers are prepared to make further sacrifices, the trade union funds can never be strengthened.

So far as the poverty of the union is attributable to the overall poverty of the workers, there is no hope for any immediate improvement in the financial condition of the trade unions. The prescription under the Indian Trade Unions Act of a minimum membership fee which every member must pay and which the trade union must impose has not resulted in any material improvement. In this connection, the National Commission on Labour says that "the minimum prescribed under law becomes the rule; union organisers generally do not claim anything higher nor do workers feel like contributing more, because the services rendered by the unions do not deserve a higher fee."<sup>3</sup> However, it has also to be remembered that the quality of services rendered by the unions and the quantity of the contribution of the members to their unions are mutually interdependent. The quality of the services is poor because the contribution is poor and vice versa. If the unions do not deserve a high fee, do the members deserve better services for the price that they pay in the form of membership fees and other contributions?

### ✓ Ways for Improving Finances

All well-wishers of the Indian trade union movement are extremely concerned about the poverty of the unions. The ways by which their finances can be improved are: (a) larger enrolment of members, (b) strict and regular collection of union dues, (c) increase in the rates of membership fee, and (d) introduction of the check-off system.

All these measures are dependent on the organisational drive and capacity of the trade union leadership and deeper consciousness amongst the workers regarding the value and utility

3. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 284.

of trade unionism. The first three do not raise much controversy, but the check-off system does not find a common acceptance.

### Check-off System

Under the check-off system, an employer undertakes on the basis of a collective agreement to deduct union dues from the workers' pay and transfer the same to the union account. This system saves the union organisers from the trouble of approaching individual members for collecting union dues and assures the union a regular collection of its dues. A difficulty that stands in the way of the introduction of the system in India on the basis of voluntary agreements between the unions and managements is the Payment of Wages Act, 1936. The Act provides a list of authorised deductions which the employers can lawfully make from the wages of their employees. The list does not include union dues. Therefore, if the union dues were deducted by the employers from the wages of the employees and made over to the unions, the provisions of the Act would be violated. Thus, even where the unions and the employers wish to do so, they cannot introduce the check-off system.

If this were the only handicap, it could be removed by necessary amendments in the Act. The practical difficulties of operating the system are more important in the prevailing Indian context. When there are rival unions all collecting dues from their members, which of the unions is to be given the right to collect the union dues? Are union dues deducted by the employers to be distributed amongst all the competing unions on the basis of their membership? If so, what about the dues collected on behalf of the workmen whose membership is claimed by all the competing unions? Further, should check-off be confined to the union members or should it cover all employees? If it covers all employees, will it then mean the introduction of compulsory unionism? The introduction of the system of the check-off bristles with these practical difficulties which cannot be removed easily. Besides, it is also contended that the check-off system will free the trade union leaders from any obligation to maintain a constant touch with the rank-and-file. Freed from the pressure of collecting union

dues by approaching individual members, leadership may tend to become autocratic.

The unions are generally of the view that "if 'check-off' is to be introduced, the facility should be restricted to recognised unions only."<sup>4</sup> While pointing this out, the NCL has held, "An enabling legal provision should be adequate. The right to demand check-off facilities should vest with the unions, and if such a demand is made by a recognised union, it should be made incumbent on the management to accept it."<sup>5</sup> However, on account of the difficulties discussed above, it is doubtful if the recommendations of the Commission would be implemented. Thus, the check-off system will have to wait till a workable and all-accepted formula is evolved for removing trade union rivalry and the principle of "one union in one industry" is implemented.

4. *Ibid.*, p. 294.

5. *Ibid.*

## CHAPTER 7

### STRUCTURE AND GOVERNMENT OF INDIAN TRADE UNIONS

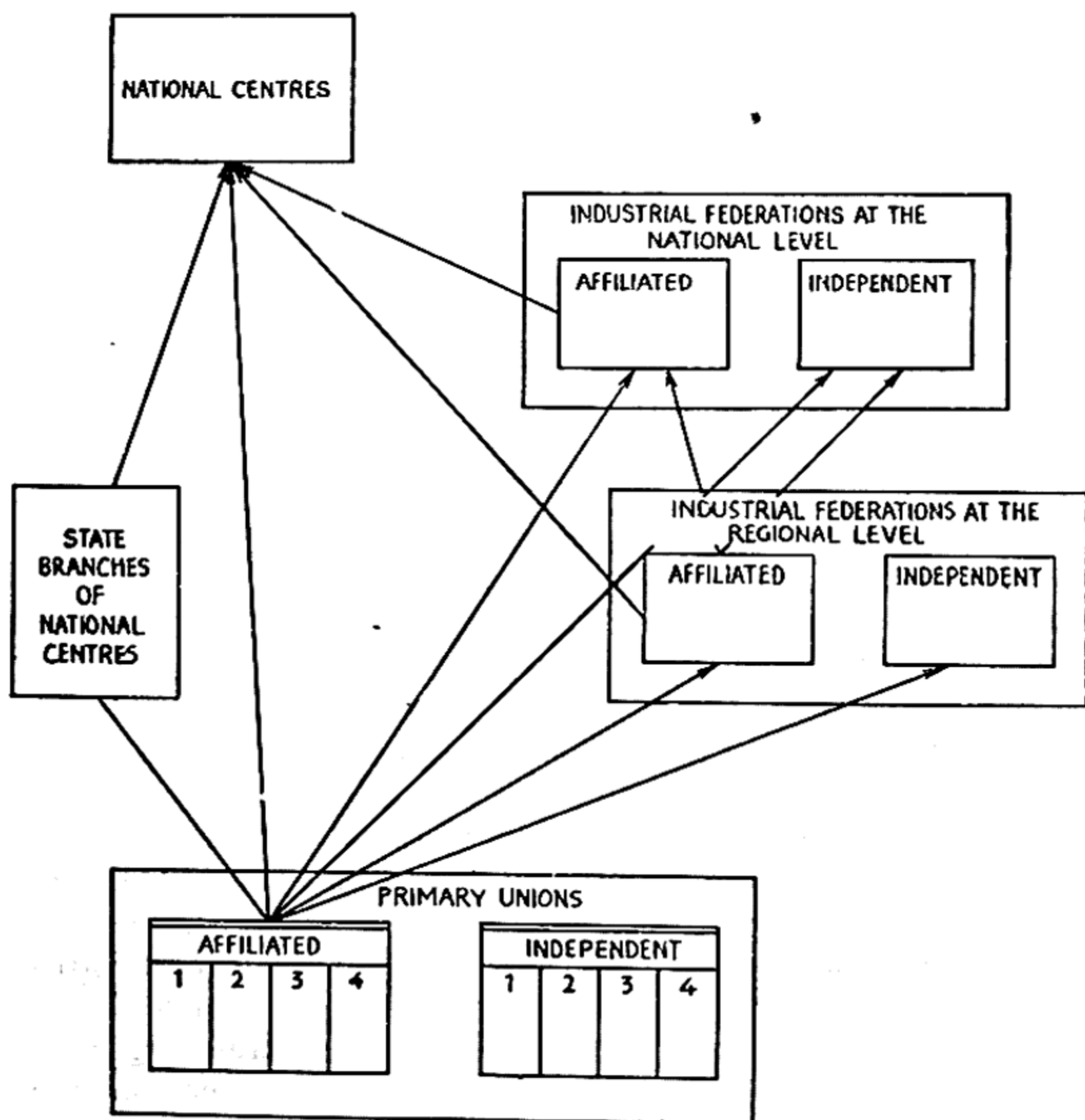


#### STRUCTURE

Any student of the Indian trade union movement trying to analyse its structure will be struck by a bewildering diversity of the bases on which the primary unions have been organised and their relationship to the hierarchical order of the movement. Apart from the multiplicity of trade unions competing for the same jurisdiction and splits along political lines making the situation complex, the existence of a variety of bases such as the plant, the place of employment, industries, crafts etc. makes the task of analysing the structure of the Indian trade union movement doubly complicated. However, an attempt has been made here to arrive at the pattern, if any, underlying the structure of the Indian trade unions. Diagram on the next page though not uniformly representative, gives an idea of the structure of the trade union movement in India.

An analysis of the nature of the various components of the diagram is needed in order to comprehend it.

At the base of the diagram are the primary unions (though never known by such a name) and at the apex, the central federations which are also called the national centres. In between fall the regional and the industrial federations as well as the State branches of the central federations.



1. PLANT LEVEL INDUSTRIAL UNIONS.
2. REGION-CUM-INDUSTRY LEVEL INDUSTRIAL UNIONS.
3. EMPLOYER-CUM-LOCAL LEVEL GENERAL UNIONS.
4. LOCAL-CUM-INDUSTRY LEVEL CRAFT UNIONS

Structure of Indian Trade Unions

### ✓ (A) Primary Unions at the Base

The primary unions are the basic units of the structure of the Indian trade unions. They are nearest to the work-place and to the workers. They recruit their members, run the local offices and conduct industrial disputes. It is they who are in the closest touch with the union members. They have been organised on a variety of bases depending upon the concrete local situations and problems. The bases of these primary unions are so diverse as to preclude any attempt at a systematic classification. Still, an effort, however limited, ought to be made to categorise and classify them for the sake of better comprehension. As usual, the primary unions in India fall under three categories in order of their numerical importance i.e. (a) industrial unions, (b) general unions, and (c) craft unions.

#### ✓ (a) *Primary unions of the industrial type*

The primary unions of the industrial type may be further classified under the following heads on the basis of their unit of organisation: (i) plant-level industrial unions, and (ii) region-cum-industry level industrial unions.

Unlike the western countries, where craft unions came to herald the advent of the trade union movement, the Indian trade union movement began with industrial unions, and craft unions are a rare phenomenon. In the early years of India's industrialisation, Indian workers were mostly unskilled and at best semi-skilled and they did not have a strongly-rooted craft bias and apprenticeship. The frequent migration from industry to industry or from industrial areas to rural areas and vice-versa prevented any high degree of specialisation needing to be protected by any craft organisations. Further, as the organising impetus came from the outsiders who were interested in the workers as a whole, rather than particular sections of workers, early unions tended to be industrial unions keeping their doors open to all who cared to join. The anti-employer speeches, along with blood-curdling national slogans, could easily catch the imagination of the workers. This process of organising the workers facilitated their integration in the national movement. Thus came the industrial unions organised at the plant level and the tradition so established continues till today and will

definitely do so in the future also. Further, the concentration of certain industries in particular areas and the provisions of industrial relations legislations in certain States permitting recognition of industry-wise unions in a given area have also contributed to the growth of trade unions on industry-cum-centre/region basis.

Whatever might be the historical reasons giving a predominant place to industrial unions in the Indian trade union movement, India has escaped thereby the agonising experience of the struggle between the well-entrenched craft unions and the newly rising industrial unions, which characterised the trade union movement of many western countries, particularly, the U.S.A.

✓ *Plant-level industrial unions.* Amongst the primary unions of the industrial type, the most predominant are the plant-level industrial unions. Such unions cover a single plant e.g. a factory, a mine or a plantation. Membership is open to all employees (except the supervisory staff) working in these units of employment, irrespective of their crafts or their occupations. Therefore, these primary unions may be called 'plant-level industrial unions'.

✓ *Region-cum-industry level industrial unions.* This type of primary unions are those whose membership is open to all workers employed in a particular industry located in a particular city or a particular region. In such cases, the base is again industrial but the unions of this type differ from the former in that they are designed to cover employees in the entire industry in a particular locality irrespective of the number of plants or the employers. The Rashtriya Mill Mazdoor Sangh and the Girni Kamgar Union at Bombay are prominent examples of this type. Such unions are generally larger in size and for the purpose of day-to-day operation, may have their branches or factory committees for each factory in the industry covered.

#### (b) *Primary unions of the general type*

In many company towns where a number of industries under the same ownership operate, primary unions of a general type have come into existence. Here, the union caters to all employees working in a variety of industries under one owner located at the same place. For example, at Dalmianagar, a cluster of industries such as cement, sugar, paper, chemicals, asbestos and hydrogenated oil has come to be established, under one ownership generally known

as the Rohtas Industries. Consequently, a union known as the Rohtas Workers' Union has been formed. Had these industries been located at different places, though continuing under the same ownership, a number of unions would have been formed for different industries. Here the common employer and the common place of employment, irrespective of the diverse nature of industries, has provided an easy base for union organisation.

The very nature of a general union, which draws members from diverse industries and employment, precludes the possibility of its functioning at any levels other than the local. In a particular place, a common employer provides a base for organisation—a base which cannot be had at the national or regional level. Therefore, the primary unions in this category may be called 'employer-cum-local level general unions'.

However, a general union operating at the local level may cover not only a number of industries but also a number of employers. Here again, membership is open to workers of all industries operating in that centre and under any ownership. The Jamshedpur Labour Union, a very important union at Jamshedpur, provides the example of this type of unions. The Jamshedpur Labour Union draws its membership from the steel industry and the engineering industries such as cable, tube, locomotive, tin-plate, wire-product etc. located at Jamshedpur. Such types of unions may be called local-level general unions.

#### (c) *Primary unions of the craft type*

There are a few primary unions organised on the basis of a particular craft of a particular industry in a particular locality. The typical example of this type of primary unions is provided by the different craft unions covering the cotton textile industry in Ahmedabad which have come to form the famous Textile Labour Association, Ahmedabad. Craft unions have also come up in railways, air transport and in some sections of ports and docks. However, such craft unions, even at the local or regional level, not to speak of the industrial or inter-industry national level, are not many. Some of the unions of the civil employees of the Central and State Governments have been formed on the basis of the grade of service. For example, all the Grade III employees of the Postal Section of the Posts and Telegraphs Department, irrespective of their place of work, belong to one union with branches at the

circle and divisional levels. Similarly, Grade IV employees belong to another union. If the grades are comparable to crafts, such unions can be taken as examples of craft unions at the national or State level. National level craft unions in industrial employments are also in the process of emerging. However, one would be sorely disappointed if he were looking for such unions in India as the National Union of Blast-furnacemen, National Society of Brass and Metal Mechanics, National Association of Locomotive Drivers and Firemen of Great Britain, the United Brotherhood of Carpenters and Joiners of America, International Brotherhood of Electrical Workers, International Association of Machinists of the U.S.A.

### *Affiliation of the primary unions*

Many of the primary unions have forged common links amongst themselves, have come together to form industrial or regional federations and also sought affiliations with the national centres. Thus, a primary union may at the same time be a member of the regional federation, an industrial federation at the national level and also be affiliated directly to a national centre and to its State branch. However, the majority of the primary unions still prefer to work and operate independently at the local level and have kept themselves out of all federal links.

### **(B) Industrial Federations**

The next higher unit in the structure of the Indian trade union movement is the industrial federation. It is well-known that workers employed in a particular industry have certain problems in common, which can best be settled at the industrial level. To begin with, the different units of the industry may have different trade unions to deal with their local problems, but they have to come together to solve effectively the common problems at the industry level.

The unions at the plant level or at the locality level in a particular industry have tended to form federations at two levels: (a) national, and (b) regional. The examples of such industrial federations at the national level are: the Indian National Mine Workers' Federation, Indian National Iron and Steel Workers' Federation, Indian National Defence Workers' Federation, and All India Railwaymen's Federation. Industrial federations at the

national level are also in operation in cotton textiles, cement, engineering, plantations, sugar, chemicals, banks, insurance, post and telegraph, ports and docks, and oil refining industries. The formation of Wage Boards for wage-fixation in particular industries, setting up of industrial committees and greater scope for consultations in the formation and implementation of labour policy, have speeded up the formation of such federations. The formation of such federations will get a further impetus in view of the fact that there is a tendency everywhere for the growth of industry-wise collective bargaining. While commending the trend towards formation and strengthening of industrial federations in India, the NCL remarked:

Formation of such national federations should be encouraged, as these will be more effective at collective bargaining forums and also as agencies to which educational and research activities for the benefit of the workers in the concerned industries could be entrusted.<sup>1</sup>

The federations operating at the regional level may become the constituents of industrial federations working at the national level and also be affiliated to the national centres. However, many of the regional federations have remained independent and have not developed any links either with an industrial federation at the national level or with a national centre. Again, though many of the industrial federations have got themselves affiliated to one national centre or the other, many have maintained their independent existence. Important amongst these independent national federations are the All India Railwaymen's Federation and All India Defence Employees' Federation.

Here it is to be remembered that not all the industries have their independent industrial federations as yet, nor have all the primary unions operating in an industry got themselves affiliated to these federations. Further, an industry may have rival industrial federations functioning on political lines depending upon the political affiliation of the primary unions. For example, in coal mining and engineering industries, both the AITUC and the INTUC have

1. Govt. of India, *Report of the National Commission on Labour, 1969* p. 283.

their parallel industrial federations. Similarly, in sugar, cement, jute, plantation etc. parallel industrial federations are in operation. Another notable feature of the national industrial federations is that many of them have not got themselves registered under the Indian Trade Unions Act, 1926. As such, whenever the problem of giving representation on a Wage Board or other national bodies at the industry level arises, the government, instead of consulting these industrial federations, requests the most representative of the national centres in the industry concerned to send nominees.

In a vast country like India, some of the problems that the workers have to face in an industry are also regional in character. Therefore, there have been industrial federations at the regional level also e.g. the U.P. Chini Mazdoor Federation and the Bihar Sugar Workers' Federation.

### (C) The National Centres

At the top of the structure of the Indian trade union movement are the national centres.<sup>2</sup> The primary unions, the regional and the industrial federations are affiliated to these national centres according to their convenience and political inclinations. These national centres are intended primarily to coordinate, guide and lay down the broad policies for the activities of their affiliates. However, it is these affiliates which are the real centres of trade union activity and they are only loosely controlled by the national centres. The national centres may occasionally come to the rescue of their affiliates whenever they are in difficulties in the conduct of industrial disputes by providing publicity, appeal for funds and political support, but in the actual conduct of negotiations, they have little say.

The national centres have their State branches consisting of the affiliated unions functioning within the territorial jurisdiction of the State concerned. The State branches are free to manage their own affairs subject to broad guidance from the national centre.

## GOVERNMENT

The government of Indian trade unions can be discussed at three levels—(A) the level of the primary unions, (B) the level of the industrial federations, and (C) the level of the national centres.

2. For details, see Chapter 5, pp. 136-140.

### (A) Government of the Primary Unions

As described earlier, the primary unions function at the plant level and are usually small in size. Therefore, their governmental structure is simple, consisting of : (a) the Executive Committee, and (b) the meeting of the General Body of Members. Despite a diversity in the bases of their organisation and political beliefs, the primary unions, whether belonging to the AITUC, INTUC or to any other centre or functioning independently, usually have a common pattern of administrative structure as outlined above.

#### *The General Body Meeting*

The powers of the union are vested in the General Body consisting of all the union members. Apart from the frequently held meetings of the General Body to guide, discuss, approve and publicise the decisions taken by the Executive Committee, the General Body also has an Annual Meeting in most of the unions. At this Annual Meeting, the General Body elects the members of the Executive Committee and the office bearers.

#### *The Executive Committee*

The Executive Committee is vested with the powers of administering the affairs of the union. It usually consists of a President, a few Vice-Presidents, a Treasurer, a General Secretary and ordinary members. The General Secretary happens to be the most powerful person in the organisation. The President, in many cases a decorative figure head, and the Vice-Presidents are elected with a view to giving a wide representation to the rank-and-file. All important decisions are taken by the Executive Committee, some of which may have to be submitted to the General Body for its approval. Whoever happens to control the Executive Committee is thus in a position to control the affairs of the union. Under Section 22 of the Indian Trade Unions Act, 1926, outsiders are eligible to become members of the Executive Committee of a union but their number cannot exceed one-half of the total number of its membership.

*Is the government of primary unions democratic?*

Thus, if one goes through the constitutions of the primary unions, one will find that they are democratically operated institutions whose office bearers are elected by the ordinary members and are responsible to them. The membership is open to all workers covered by the primary union and any body who cares to become a member is free to do so without being required to pay any excessive initiation fee.

However, the actual working of a trade union is far from being democratic and there is a big gap between the provisions of the constitutions on paper and their implementation in practice.

Firstly, many of the unions are in the pockets of their leaders or they may exist only on their writing pads. Secondly, even where the trade unions are real, elections are not regularly held. Thirdly, even when elections are held, they are in many cases, cooked and rigged. Once a set of office bearers comes to control the affairs of a union, it is very difficult for the rank-and-file, even if it so wishes, to dislodge them. Fourthly, the general apathy of the ordinary members to the way the affairs of a union are managed, their non-attendance at the General Body meetings and non-participation in the union elections, leave the leaders of the union in a virtually autocratic position. Finally, though membership of a union is open to all concerned on paper, union members are carefully selected and enrolled; the dissidents being assiduously kept out of the union with a view to avoiding any possible challenge to the existing leadership.<sup>3</sup>

Under these conditions the dissatisfactions among the rank-and-file with the work of the office bearers or the aspirations of a new leadership cannot find an easy democratic expression. The only way in which the ordinary members can assert themselves, if they so want, is to form a rival union. It is not unusual for two sets of office bearers to claim the control of the affairs, offices and properties of the same union. The two sets operate in the name of the same union and claim recognition. The most common way of

3. These remarks should not be taken as being wild and irresponsible. The authors make these points after having talked to many union leaders, officers of the Labour Departments and responsible persons from managements. These features may not be very widespread but are also not very rare.

asserting their rival claims, which could have been best resolved by democratically conducted elections, is to bring pressure upon the employer through industrial disputes and strikes. Well-meaning employers are thus unnecessarily harassed and industrial relations become embittered.

Resorts to civil courts to get the rival claims established are increasing. The officers of the Labour Departments find that an increasing proportion of their time is being consumed in composing such leadership disputes.

Thus, it is absence of democracy in the actual working of the trade unions (though abundant constitutional provisions for the same are available on paper) that accounts for rivalry and multiplicity of trade unions in many cases. If, somehow or the other, democratic elections could be ensured as provided for in the constitutions of the trade unions, factionalism and rivalry could be mitigated. Trade union leaders even with divergent political beliefs could work in the same trade union without striving to set up rival unions if it were possible to change the leadership through democratic elections.

However, lack of democracy in the conduct of the affairs of the trade unions has, somehow or other, become a common feature in other countries also. Of the extent of democracy in the American trade unions, it has been said:

Trade unionism in this country presents a curious paradox. The ordinary rank-and-file union member frequently enjoys less freedom in relation to his own union leader than he does in relation to his employer. Against the arbitrary power of the 'boss' he often has protection considerably more effective than against that of the union official. In the administration of his own organisation, he sometimes has less to say than, thanks to collective bargaining, he has in the affairs of his shop or factory.<sup>4</sup>

Similarly, displacing leadership in the American trade unions is not easy. In any event, it is difficult to displace leaders once they are in power. They have the advantage of superior knowledge of most issues raised; they can frequently dub the opposition as

4. W. Herberg, "Bureaucracy and Democracy in Labor Unions", in Shister, Joseph (ed.), *Readings in Labor Economics and Industrial Relations*, p. 114.

emanating from the 'enemies of the union'; possibly, it will "look bad" if they are turned out; perhaps assignments to committees and jobs can be used to gain support; there are possibilities of packing meeting halls when only a fraction of the members can find place in them; rough tactics can be used to gain support; rough tactics can be used to frighten protesting minorities into submission; and possibly the counting of ballots is controlled. Any one at all familiar with union affairs can easily supply examples. Generally speaking, human nature works out in the union world very much as in municipal affairs. It cannot be denied that there is not a little misgovernment. Not infrequently, leaders continue in office when a change would be desirable, and even when it is desired by those who have the best interests of the organisation at heart.<sup>5</sup>

There may be a difference of opinion with respect to the extent of undesirable and undemocratic methods used by trade union leaders in India to perpetuate their leadership but the general indifference of the vast body of the ordinary trade union members to the affairs of the union are recognised even in those countries where trade unions have acquired a dominant status and position. In India, the general apathy of the rank-and-file is more widespread. This apathy is visible not only in the non-payment of the union dues but more so in the high degree of intermittent membership. Many of the Indian workers join the union only when they are in distress and require union support, such as in the cases of disciplinary action against them. Once the issue is settled, they do not feel the necessity of continuing their membership and discharging its obligations.

The factors responsible for this state of affairs are diverse. It may be that the general lack of education in the Indian workers is primarily responsible for this attitude of indifference; it may also be that the organisers and the leaders of the trade unions have not been able to evolve effective ways of attracting the workers; it may also be that the workers feel bewildered when rival unions are competing for their loyalty. Whatever be the causes, the apathy is there and has to be overcome if the trade unions are to secure a stronger foundation.

5. Harry A. Millis and Royal E. Montgomery, *The Economics of Labor*, Vol. III, pp. 248-249.

So much stress has been laid here on the ills of the government of the primary unions because what happens at this level is necessarily transmitted to the higher levels also. The persons who maintain their control over the primary unions through undemocratic methods will also seek to maintain their position in the higher organisations through the same techniques. One can rarely expect effective democracy in the working of an industrial federation or a national centre if its constituents are not managed along democratic lines.

### **(B) Government of the Industrial Federations**

The government of industrial federations follows a pattern similar to that of the national centres discussed in the subsequent section. An industrial federation generally operates through three main organs, namely, (a) General Body or Conference, (b) General Council, and (c) Working Committee.

*The General Body or Conference.* The General Body or Conference consists of delegates elected by the affiliated organisations. The number of delegates to be elected varies from federation to federation and is related to the membership of the affiliated unions (on a slab basis) as prescribed in the respective constitutions. The members of the General Council and Working Committee are elected by the General Body. The General Body deals with the policy matters and adopts resolutions for the guidance of the General Council and the Working Committee. The General Body meets at least once a year. Provisions are also made for requisitioning special sessions of the General Body of a federation.

*General Council.* The General Council consists of the members elected by the General Body on the basis of the total membership of affiliated organisations. As such, there are considerable variations in the size of the Councils. The General Council meets at least once in a year. The Council frames rules or looks into those framed by the Working Committee for the effective functioning of the federation concerned and is generally empowered to modify the decisions of the Working Committee.

*Working Committee.* The Working Committee generally consists of a President, Vice-Presidents, a General Secretary, Secretaries and a Treasurer, and certain other members elected by the

**General Body.** Provisions have also been in most cases for the inclusion in the Working Committee of outsiders who have sympathy with the workers in the industry and who accept the aims and objects of the federation. The Working Committee is generally responsible for the management and transaction of all business of the federation, taking of proper steps for carrying out the resolutions adopted by the General Body and the General Council, and dealing with an emergency situation affecting the interests of the members. In many cases, the Working Committee is empowered to frame rules not inconsistent with the constitution and to appoint sub-committees for special purposes.

### **(C) Government of the National Centres**

All the National Centres in India are similar in their administrative structure. Each one of them has a three-tier administration consisting of: (a) the Annual Delegates' Meeting, (b) the General Council, and (c) the Working Committee.

#### ***(a) The Annual Delegates' Meeting***

The Annual Delegates' meeting is the final repository of constitutional authority. The Annual meeting is also called the Annual Conference. Delegates are elected by the affiliated unions on the basis of their membership. The number of members on the basis of which a delegate is elected varies from centre to centre. Whereas in the INTUC and the HMS, the affiliates send one delegate for every five hundred members or a part thereof, in the AITUC the affiliates send one delegate for every two hundred members. These delegates are elected by the members of the affiliated unions.

The general policy of the centres is laid down at the Annual Delegates' Meeting, subject to the limitations of the constitutional provisions. The office bearers of the centres i.e. the President, Vice-Presidents, General Secretary, Secretaries, and Treasurer are elected at the Annual Delegates' Meeting in the case of all the national centres except the INTUC where the office bearers are elected by the General Council. Questions at the Delegates' Meeting are decided by a majority of votes, but on important issues such as an amendment of the constitution, affiliation to any foreign

organisation, and certain other matters of political importance, a three-fourth majority is required. The constitutions of the national centres also provide for the convening of special Delegates' Meetings on the request of a prescribed number of affiliates.

### *(b) General Council*

The constitutions of the national centres provide for the formation of a General Council consisting of the office-bearers (namely, the President, Vice-Presidents, General Secretary, Secretaries and Treasurer) and a certain number of elected members (from different trade groups or State branches) and co-opted members. The size of the General Council varies from centre to centre. The co-opted members may not necessarily be connected with the trade union organisation affiliated to a centre. The General Council meets at least once a year.

The General Council elects the members of the Working Committee other than the office bearers, but in the case of the INTUC, it elects the office bearers also. The Council frames bye-laws and regulations and takes all proper steps to carry out the work of the centre particularly in the spheres of affiliations, duties of office bearers, and election of delegates. It is also empowered to take disciplinary action against the office bearers or other members. In general, the question of disaffiliating a union is decided by the General Council subject to the ultimate confirmation by the Annual Delegates' Meeting. It also hears and decides appeals against the decision of the Working Committee. In most cases, the General Council determines from time to time the list of trade groups for the purpose of representation and election to various organs of the centre. Arrangements for holding the Annual Delegates' Meeting and preparation of draft resolutions for its approval are also made by the General Council.

### *(c) Working Committee*

The day-to-day administration of the centres vests in a Working Committee consisting of the office-bearers i.e. the President, Vice-President, General Secretary, Secretaries, and Treasurer, and certain other members elected by the General Council. The main function of the Working Committee is to look after the day-to-day administration and to carry out the resolutions of the Gene-

ral Council and Annual Delegates' Meeting. It also deals with emergencies and is generally expected to promote and further the aims and objects as laid down in the constitution. In the case of the INTUC, the Working Committee performs certain other functions which, in other cases, ordinarily come under the purview of the General Council. Some of these include : framing of rules regarding affiliation, elections and method of voting; formation and proper functioning of State branches and federations; resolution of disputes between constituent units; suspension or removal of a member of the General Council or Working Committee. Appeals against the decision of the Working Committee lie with the General Council.

#### *State and regional branches*

The national centres have also their State branches covering the unions affiliated to a centre in the State concerned. The State branches are generally free to manage their own affairs subject to the constitutional provisions and directives from the parent organisation. In some cases, regional branches in a particular State have also been set up.

#### *Political committees*

The constitutions of the AITUC and the UTUC provide for the appointment of a Political Committee by the Working Committee. The main functions of the Political Committee include: encouraging affiliated unions to build up political funds; organising elections to the legislatures and local bodies; keeping a watch over government's taxation proposals and the development of labour legislation from the working class point of view; and to carry on political propaganda consistent with the constitution.

This brief description of the administration and government of Indian trade unions is much too general because only the common features have been sought to be presented. The abstract is primarily based on the formal constitutions of the primary unions, federations and national centres. In actual working, conventions rather than formal constitutional provisions are perhaps more effective. Any discussion of the divergence between formal constitutional provisions and effective operational mechanisms is not possible within the limited scope of this book.

## CHAPTER 8

# INDIAN TRADE UNIONS, POLITICAL PARTIES AND THE PROBLEM OF LEADERSHIP

### GENERAL BACKGROUND

The relationship between the Indian trade union movement and the main political parties has been a subject of comment by all thinkers and writers who have had occasions to study the Indian trade union movement. Even a cursory glance through the history of the movement will indicate the close and direct link between the trade unions and the political parties as well as the contributions made by political workers to the growth of the unions. This close link is partly explained by the fact that the Indian trade union movement was nursed and developed by the political leaders of the country as a part of the national movement for independence. The political goals of drawing in the industrial workers in the fold of the national struggle were as important as the economic goals of securing improvements in their living and working conditions. It is well known that in many instances the dominant personalities in the two movements were the same. There was no exclusive trade union leadership untouched by the political aspiration of national independence. This tendency was natural, inevitable and also desirable. Besides, this is not a peculiar Indian experience. All over the world, wherever colonial countries had been struggling for national independence or are struggling today for the same, the trade union movement has been an integral part of the national movement. It is futile to expect the trade unions in such countries

to maintain an attitude of political neutrality when the basic issue of an independent national existence is itself in question.

Under the conditions of colonial domination, when national aspirations are striving for independent recognition, trade unions can neither afford to be cut-off from the main streams of political struggle for independence nor operate successfully in isolation. An alliance with political parties under such conditions is conducive to both the trade union movement and the struggle for national independence.

These were the constellations of economic and political conditions under which the Indian trade union movement was born; hence the dovetailing of the trade unions and the political parties.

∠ The factors that bring about a close collaboration between the trade unions and political parties under conditions of a foreign rule do not disappear with the attainment of independence. ∠ The basic questions regarding the new social, political and economic order to be created after independence come to the forefront and continue to agitate the minds of all politically conscious elements. ∠ Different political parties come forward with different ideologies and programmes of political action to determine the nature of the new order. ∠ These are such issues with which the working class is ultimately concerned and, therefore, has to play an active role in the determination of the final outcome of the clash of different ideologies as a basis for social reorganisation. This reorganisation will affect the workers not only as the citizens of the country but also as the main producers of wealth. Hence, the trade unions as working class organisations become deeply involved in political programmes.

∠ In striving for the victory of their ideologies and programmes, the main political parties cannot hope to succeed unless they draw in the trade unions within their fold. The trade unions provide to the political parties easy channels of communication for the spread of political ideologies and dissemination of political ideas. ∠ Being in power or in opposition does not make any difference to their desire and the need to win over the loyalty of the workers by setting up unions of their own choice. ∠ The ruling parties seek to control trade unions in order to carry out their economic and political

policies and opposition parties attempt to obtain a similar control in order to dislodge them from power.}

Therefore, the post-independence period also in the hitherto colonial countries finds the continuation of the process of collaboration between political parties and trade unions as developed during the period of the struggle for political emancipation. This is a feature repeated in country after country in Asia, Africa and Latin America. India has also been no exception to this general trend. It is in this general background that the problems created by the close affinity between the Indian trade unions and the political parties have to be discussed and analysed.

### DOMINATION OF INDIAN TRADE UNIONS BY POLITICAL PARTIES

Every political party in the country has sought to have under its control and domination as many trade unions as it can. The result is the existence of six important central federations—each working in close collaboration with and under the guidance, if not under the direct control, of a separate political party. The link between the AITUC and the Communist Party of India<sup>1</sup>, the INTUC and the Indian National Congress, the HMS and the Sanjukta Socialist Party and the Praja Socialist Party, the CITU and the Communist Party of India (Marxist), the BMS and the Bharatiya Jan Sangh, and the UTUC and the small splinter parties of the left is well known.

However, the main central federations take pains to publicise that they are not under the domination of any particular political party and that their platforms are open to all trade unions and trade union workers so long as they are genuinely interested in trade union work. Similarly, the political parties also disclaim that they maintain any control over any of the federations.

Every time a new central federation is set up, such pleas for establishing an organisation free from the domination of the government, employers and political parties are repeated. Here it may be worthwhile to refer to a statement made by M.N. Roy, the founder of the Radical Democratic Party of India, at the time of

1. A split in the AITUC took place in 1970 consequent upon a split in the Communist Party of India.

the establishment of the Indian Federation of Labour in 1942 in opposition to the AITUC which was alleged to have then gone under the complete control of the Communist Party of India. Roy, in his statement said:

Although the controversy over a political issue led to the establishment of the federation, we propose to build it up strictly as a trade union organisation to function according to the fundamental principles of trade unionism....

Introduction of party politics and other extraneous controversial matters has seriously weakened the Indian trade union movement. There should be no objection to trade unionists holding political views and belonging to political parties accordingly. But it is not desirable to utilise trade unions as a platform for this or that political party. The fight among rival political parties for the capture of trade union organisations is positively reprehensible. In order to claim mass support, political parties are in the habit of manufacturing trade unions on paper, if they fail to capture living organisations.

∠ We propose to keep Indian Federation of Labour entirely free from all these malpractices which are prejudicial for the growth of a genuine trade union movement.<sup>2</sup> ∠

The statement could be treated as a sample for many statements that have been made from time to time when a new federation has been formed.

What M.N. Roy said on the occasion of establishing the Indian Federation of Labour as a rival to the AITUC has been repeated everytime when a new competing central federation has been set up; whether it is the establishment of INTUC in 1947, or the HMS in 1948, or the UTUC in 1949. But experience has shown that such claims have proved to be a misnomer and are intended primarily for the consumption of the politically naive or the neutral.

∠ Nevertheless, in spite of these disclaimations, the link between the Indian trade unions and the main political parties is very close, intimate and direct. ∠ This close affinity arises from the fact that

2. *Bulletin* No. 1 October 1942 of the Indian Federation of Labour as quoted in V.B. Karnik, *Indian Trade Unions—A Survey*, pp. 132-133.

the political parties have made conscious efforts to organise the workers and set up trade unions amenable to their control and influence by providing leadership, trained bands of organisers and ideological guidance. The National Commission on Labour speaks of "the association, formal or informal, of different central organisations with various political parties who regard the former as the major source of their strength."<sup>3</sup>

This, then, is the real situation, though, by no means, a novel experience. There are many countries where the trade union movement functions in close cooperation and collaboration with the political parties. In Great Britain, the relationship between the British Trades Union Congress and the Labour Party is very close and, as a matter of fact, the British Labour Party is a creation of the British Trades Union Congress which still continues to provide the bulk of its finances and membership. Similarly, all over the European continent the trade unions draw their inspiration from political parties, and are controlled and guided by them. In the communist countries, the relationship becomes still more intimate and it is often said that in these countries, the trade unions have no existence independent of the communist parties of those countries. (In the newly emerging independent nations also, whether in Asia or Africa, political parties have sought to organise trade unions and maintain their control over them. Thus, the Indian experience of the control and domination of the trade union movement by political parties is, by no means, a peculiar phenomenon.)

As compared to the British situation, the Indian situation may present a contrast. Whereas in Great Britain it is the British Trades Union Congress that created the British Labour Party and maintains, even today, a measure of control over it, it is the political parties which control and dominate the trade unions in India. However, a detailed and critical study of the relationship between the trade union movement and political parties is likely to show that it might be factually incorrect to speak of one-sided control of the one by the other. When two organisations come to function together, it is natural that there should be an interaction and mutual give and take and that the one-sided control should, in due

3. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 283.

course, grow into mutual interdependence. This has been the experience of most of the countries where both trade unions and political parties have been functioning together. So far as India is concerned, the same experience has been repeated. <Though the Indian political parties have taken active interest in the organisation and control of trade unions, the latter have also influenced the political and economic programme of the former>

### Consequences of the Domination

Assuming that the relationship between the Indian trade unions and the political parties is not that of mutual interdependence but of unilateral control of the trade unions by the political parties, the important question to be analysed relates to the results of this relationship. What are the consequences of this relationship? Does it have a deleterious and weakening influence on the Indian trade unions or is it beneficial to them?

These are questions which need to be analysed in order to form a judgement about the desirability or otherwise of maintaining the relationship that exists at present between the trade unions and the political parties in India. It is agreed on all sides that the Indian political parties have made outstanding contributions to the emergence and growth of the Indian trade union movement. >But for the leaders and political workers inspired by various political ideologies, tirelessly devoted to the nursing of the nascent unions in a self-sacrificing mood, the Indian trade unions would not have attained the stature and enjoyed the strength and influence that they command today. In the absence of such a band of selfless workers, perhaps, the trade unions would have been still struggling for mere existence.

<Even today, the main strength of the Indian trade unions lies in their close collaboration with the political parties. It is in the Indian Parliament and the State legislatures that the trade unions have their strongest spokesmen.> Not only that these spokesmen wield considerable influence in shaping the course of labour legislation, but also that when the trade unions find themselves in difficulties in a strike situation, the spokesmen act in many cases as their 'rescue-stations'. Whenever there is a strike and a quick settlement is not forthcoming, these leaders of the trade union

movement, through persistent questions and motions, pressurise the government for adopting a more sympathetic and liberal policy. In the industrial belts of the country, the various political parties vie with each other in setting up such candidates at general elections who work in the trade union field and command influence amongst the workers. As a result, the total number of M.Ps., M.L.As., and M.L.Cs. coming from the labour field and espousing the cause of labour becomes proportionately large. That is why, the Indian trade union movement, though economically weak, is politically so strong!>

There are persons who often comment that the Indian trade unions are weak. It may be that the Indian trade unions' scene primarily consists of small unions which are individually weak, but collectively, the Indian trade union movement exhibits signs of strength and vigour, unmatched by any trade union movement of the same age. Where, and in which part of the world and which trade union movement of only fifty to sixty years' standing has shown the same degree of maturity, strength and influence, which the Indian trade union movement does? In which country, where both the organisable and organised workers constitute such a tiny fraction of the total labour force as in India, has the trade union movement exercised the same influence on labour legislation and government policy in general, as has been the case in India? The credit for all this goes to the closer link between the trade union movement and the Indian political parties.

The extent, type and number of protective labour legislations adopted since 1947 is an indication of the political influence of the Indian trade union movement, which though covering a very small percentage of the total labour force, has succeeded in securing a privileged position for the industrial workers in the country.

Besides a competition among the political parties and a competitive spirit in the trade union movement to win the loyalty and allegiance of the industrial workers have led to elaborate efforts at organising the workers and thus the percentage of organised workers is greater today than what would have been otherwise. In most cases, this competition has resulted in parallel organisations being set up in the same plant and in the same industry; trade union rivalry is, thus, the result. However, it is due to this rivalry

that more and more workers have been brought within the trade union fold. In the absence of such a rivalry, organisational efforts would have, perhaps, slackened. This spurt to organisational efforts could be compared to the gains in the number of organised workers caused by the split between the AFL and CIO in the U.S.A. during 1930's. Dulles remarks, "The AFL and CIO continued to strive to build up their strength in jealous competition."<sup>4</sup> The political bidding for the allegiance and the loyalty of the industrial workers has led the political parties to espouse more and more the cause of labour and it cannot be denied that industrial workers have been a beneficiary.<sup>5</sup>

Further, the intimate relationship between the Indian political parties and the trade unions has imparted to the trade union movement a liberal outlook, rarely present in the absence of such a relationship. Trade unions, individually sectarian as they happen to be, become much too engrossed with promoting the interests of their members to take into account the impact of their activities on the other sections of the population or on the society as a whole. For example, a trade union of cotton-textile workers working strictly in the interests of its members is very likely to oppose any encouragement given to the handloom industry if it competes with the mill-made cloth. The job-security and other economic interests demand that the union concerned should show opposition to the development of a competing industry. Similarly, a union of coal miners may very likely oppose the development of an alternative competing source of power, however urgent it may be in the national interests. In a like manner, when wage demands are made, considerations of national interests are rarely allowed to intervene. A political party, on the other hand, when it functions on a national basis, cannot afford to be so sectarian. Therefore, the broader outlook of a political party also permeates the trade

4. Foster Rhea Dulles, *Labor in America*, p. 309.

5. When questioned about the exploitation of the Indian workers by political parties during an interview with one of the authors, the late N.M. Joshi, aptly called the father of the Indian trade union movement, said that, instead of being exploited by the political parties, the Indian workers were exploiting them by changing their allegiance from union to union and party to party. When the union fails to deliver the goods, they shift their loyalty to another.

unions that it controls. This is what has happened in the case of the Indian trade union movement. It has developed a more mature and broader outlook which is rarely to be found in the trade unions of those countries where they function in political isolation.

### Harmful Effects of the Domination

In spite of the advantages that the political leadership of the Indian trade unions has conferred upon them, it is the harmful effects of this leadership that are frequently talked of and commented upon. What are these harmful effects? Of these two are outstanding: (a) trade union rivalry and multiplicity of organisations in the same plant or industry or at the national level; and (b) permeation of factionalism of the political parties into the trade unions.

#### (a) *Trade union rivalry along political lines*

Trade union rivalry is acute and pervades the entire industrial scene in India. Practically no important industry or important industrial centre is free from the existence of parallel and competing unions. On the Indian railways there exist two parallel federations: (a) the Indian Railwaymen's Federation, and (b) the Indian National Federation of Railwaymen; in the textile industry in Bombay there operates two important trade union organisations: (a) the Girni Kamgar Union under the domination of the Communist Party, and (b) the Rastriya Mill Mazdoor Sangh under the control of the Indian National Congress. In the coal mining, engineering, jute and other industries, similar parallel organisations under the auspices of different political parties and many independent unions are competing for the same jurisdiction. At the plant level also, rival unions are functioning everywhere.

The competition among the rival unions may have resulted in a larger membership, but most of their time and efforts are directed towards ousting the rivals, jockeying for positions, and carrying on jurisdictional conflicts. Thus, the domination of the Indian trade union movement by political parties has resulted in splitting it along political lines and has created unhealthy rivalry. In this regard, the National Commission on Labour also remarked, "Multiple unions are mainly the result of political outsiders want-

ing to establish unions of their own, with a view to increasing their political influence, albeit in urban areas."<sup>6</sup>

(b) *Emergence of factionalism*

Another unhealthy consequence of the control of trade unions by political parties, in addition to the split along lines of political ideology, has been the factional split in the same trade union professing the same political ideology. When factionalism overtakes a political party, either on account of personal or group rivalry, the same factionalism is injected into the trade unions controlled by that political party. This trend has become more visible during recent times and is mostly confined at present to the unions affiliated to the INTUC. The factional fights going inside the organisations of the Indian National Congress—the ruling party of the country finds an expression in a similar factionalism growing among the INTUC unions also. These are undercurrents known to all observers of the scene, but published evidences are hard to come by. Such factional splits in the INTUC unions at Jamshedpur, one of the strongest bases of the INTUC, caused by the factional fights in the Congress organisation of Bihar are too well known to demand any corroborative evidence. The INTUC unions operating at Sindri Fertilizers Plant, HEC, and Gomia Explosives Plant, besides many others, are divided on factional lines. Similarly, the INTUC organisation in Madhya Pradesh is faction-ridden. Wherever Congress organisation was factionally divided, the INTUC unions have also become victims of this disease.

Thus, divisions and sub-divisions have become the chronic ills of the Indian trade union movement. The resulting harms to the movement are apparent. The movement becomes fragmented and disjointed. Each section pulls itself in a different direction. The Indian trade union movement, instead of becoming a united and mighty torrential river, is sub-divided into numerous rivulets.

The day-to-day working of the trade unions is adversely affected on account of rival unions and their factions. Rivals indulge in mutual mud-slinging and accusations which are widely published, shaking workers' faith in the trade union itself. The INTUC unions all the time accuse the AITUC leadership of

6. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 288.

extraterritorial loyalty, of causing unnecessary strife and bitterness and of bringing in political considerations in employer-employee relationship. The AITUC accuses the INTUC unions of being controlled and financed by the employers and dominated by the government. In this state of acrimonious and, in many cases, vulgar debates, it is too much to expect the Indian workers to place their faith in any of the trade unions and give them unstinted loyalty and allegiance. The workers are bewildered, confused and confounded and the natural reluctance to join a union, which is a feature everywhere, is further strengthened.

◀ In addition to the mutual accusations, rival unions sometimes go to the extent of even obstructing the normal conduct of trade union activities on different pleas. A union does oppose a strike by a rival on various grounds e.g. of the strike being unnecessary, uncalled for, against the interests of the workers and being anti-national. Conditions are created where the antiunion employer gets a chance to paint the trade unions in the darkest colour and to play one union against the other. ▶ The policy of 'divide and rule' becomes convenient to him; he partly appeases one and brow-beats the other, causing all round disruptions. On the other hand, ▶ a responsible employer finds himself at sea when he has to choose between rival unions without the availability of any clear guidance as to the principle which he should adopt in making his choice. ▶

◀ The discussion of the relationship between the Indian trade union movement and the political parties has shown that the existing relationship has neither been an unmixed blessing nor an unmixed curse. The Indian political parties have proved to be both a boon and a bane for the Indian trade union movement. They have fostered and nursed it but at the same time have prevented the development of an independent personality for it; they have united some of the unions by providing a common thread of political ideology but have divided the movement; they have made it strong on the political front but weakened it on the economic; and they have imparted to it a liberal outlook but restricted its internal effectiveness. In short, they have acted like an authoritarian and loving father who, all the time solicitous of the welfare of his child, bestows unbounded love and affection on it, sacrifices everything he has for its sake, but at the same time, resents when the

child shows traits of independence and does not let it out on the wide world lest it should be harmed.

### The Proper Relationship

In view of what has been said earlier, it becomes extremely hazardous to give a definitive verdict on the desirability or otherwise of continuing the existing relationship between the Indian political parties and the trade unions. However, all would agree that if the Indian political parties could relinquish their control over the trade unions, one of the divisive forces would disappear, and the trade union movement would become united. Still, the likely emergence of a unified trade union movement does not mean that it will also remain politically neutral. No trade union movement in the world functions in political isolation. The ever-increasing role of the State in the economic life of the community and the realisation of the limited effectiveness of trade union efforts on the economic front make it incumbent on the trade union movement everywhere to seek to exercise more powerful influence on the machinery of the State. Consequently, the trade union movement seeks either to establish a political party of its own or to ally with political parties in existence in accordance with the objectives of the movement. The British Trades Union Congress adopted the former course by establishing the British Labour Party. The American trade union movement is also fast discarding its traditional attitude of political neutrality. While pursuing the policy of 'punishing your enemies and rewarding your friends', the American trade union movement has come to a position where it finds more and more of its friends from the Democratic Party. Though some of the trade union movements of the world might have been politically neutral in the past, today more and more of them are acquiring political affiliations because they think that only in this way they can further the goals they profess.

If this appraisal of the relationship between the trade union movement and political parties is accepted, the relinquishing by the Indian political parties of their hold on the trade unions, a very unlikely event, does not ensure the political neutrality of the Indian trade union movement. As soon as the existing political affiliations are removed, the trade unions will attempt to establish a

political party of their own or will be allied with either of the political parties. Perhaps, when this happens, the political party which the movement creates will be more amenable to its influence and the present position will be reversed. But whether that development will be more desirable and will mean an improvement over the existing situation is still debatable.

### THE PROBLEM OF LEADERSHIP

A crucial problem facing the Indian trade unions today is the question of trade union leadership. The control of the Indian trade unions by political parties has naturally resulted in the latter providing and controlling the top leaders not only of the national federations but also, in many cases, of individual unions whether operating at the plant or the industrial level. It is through these leaders that the Indian political parties control the policies and the day-to-day working of the trade unions. Such leaders have come to be known as outsiders. Many of the ills of the Indian trade union movement are attributed to these leaders. There is a controversy going on in this country regarding their role and utility to the trade unions.

These outsiders are drawn mostly from a middle class background and they occupy the key posts i.e. the President, General Secretary, Treasurer, Secretary etc. They represent the workers in collective bargaining with the employer, conduct their disputes before the tribunals and courts, establish contacts with the officials of the labour departments, act as public relations officers for the trade unions concerned and in general control their policies and functioning. However, the organisations of white-collar workers engaged in services and distributive trades e.g. posts and telegraphs, defence industries, banking and insurance, journalism, teaching at the primary, secondary and university levels and public services are mostly characterised by inside leadership.

The outside leaders, whatever might be the extent and degree of their control over trade union activities, constitute a minority on the trade union executive. Section 22 of the Indian Trade Unions Act, 1926 requires, "Not less than one-half of the total number of the office-bearers of every registered trade union shall be persons actually engaged or employed in an industry with

which the trade union is connected....” In practice, “outsiders in the union executives are estimated to be about 10 per cent, much less than the number legally permitted.”<sup>7</sup>

Technically and formally, all union decisions are made by the executive of the union, no doubt, but the outsiders, though in minority on the executive, play a key role in this decision-making process because of their better knowledge, competence and political influence.

### **Who are the Outsiders?**

Who are these outsiders? Mostly, as has been said, they are persons drawn from political parties; some of them are independent of the political parties, though they may have their own political ambitions and views; some of them are persons who are essentially interested in the welfare of the workers without any political attachment; and there are others who are neither politically oriented nor concerned so much with the welfare of the workers but are primarily interested in promoting their own selfish goals—both economic and others.

### **Unaffiliated Leadership**

That an overwhelming majority of unions in the country still continue to be unaffiliated to any of the national centres is perhaps an evidence of the fact that the leaders of the unaffiliated trade unions are independent of the political parties which have their respective national centres.

The need of each of the national centres to bring as many trade unions as possible within its fold in order to establish its representative character will hardly permit the independent functioning of a union, unless it is beyond the control of the political party that controls the particular centre. Of course, some of the unaffiliated trade unions functioning in such sectors of employment as defence industries and States services cannot legally affiliate themselves to national federations even though they wished to do so. Further, some of the unaffiliated trade unions might find it

7. Govt. of India, *Report of the National Commission on Labour*, 1969, p. 290.

inexpedient to seek affiliation because of their composite leadership. Still, these two factors alone cannot explain the absence of affiliation to the central federations for such a large number of trade unions in the country.

The unaffiliated character of such a large number of trade unions can be satisfactorily explained in terms of the political independence of their leaders. It follows that an important section of trade union leadership in India is beyond the reach of the political parties and is not furnished by them. Therefore, any discussion of the political affiliation of trade union leadership in India should not minimise the importance of this independent leadership. However, it does not mean that these leaders do not have their own political aspirations or that this leadership is provided by the insiders.

At the first sight, it might appear that the absence of a political affiliation for such a large number of trade unions is good for them as well as for the trade union movement, but one should not fail to take into account its unhealthy consequences. Besides preventing the strengthening of the national federations, it could also provide a cloak for many labour racketeers to function in the trade union field. The independent leaders of the unaffiliated trade unions in many cases lack the devotion to a cause and the consequent spirit of self-sacrifice which comes from political affiliations. In isolated places, particularly in the mines, unscrupulous but politically unattached leadership is not uncommon. Such leaders exploit both the employers and workers for their personal gains. In many cases, the independent trade unions are company unions and, in some cases, they are neither company unions nor independent. With the help of undesirable social elements, some of these leaders maintain an exceptional hold over the employers and at the same time prevent the growth of genuine trade unions.

Another feature of the outside leadership is that most of these leaders are well, and many of them very highly, educated. There are many such leaders who have had college education. In a situation where an extreme degree of illiteracy and lack of education prevails, education confers an added advantage on these leaders. In addition to enabling them to follow the intricacies of

laws and regulations and to argue their cases before tribunals, administrative authorities and employers, being educated gives them prestige among illiterate workers.

Further, many of these leaders possess independent means of livelihood and are not dependent on the trade unions for their maintenance because of their middle class background and also because many of them are engaged in other professions like law and medicine. If at all they are so dependent, it is rarely that they depend on any one particular union for they happen to control a number of trade unions at the same time. This is an obvious advantage to Indian trade unions in view of their poor financial resources when they can ill-afford to have a full-time salaried staff.

In addition, many of these leaders have behind them a long history of sacrifice and participation in the national struggle for independence or trade union struggles. Many of them, no doubt, live on the capital of their past sacrifices without adding to it any further. The hallow of past sacrifices still continues to impress the workers in industrial belts.

However, this cannot be said of the new entrants who are motivated, very often, by considerations of personal ambitions and political gains. Gradually, it is becoming a fashion for persons who wish to acquire political influence to build and control and have in their pockets as many unions as they possibly can.

Thus, the foregoing shows the important features and characteristics of the trade union leadership in India today. This discussion has also touched upon the advantages which this leadership has brought to the Indian trade unions.

#### **Adverse Consequences of Outside Leadership**

What are the adverse consequences of the outside leadership?

Firstly, the outside leadership, being both the cause and the effect of the domination of the Indian trade unions by political parties, has resulted in the political division of the Indian trade union movement, the multiplicity of trade unions in the same plant or industry, and trade union rivalry.

Secondly, it is said that the outsiders bring in extraneous considerations, particularly political, in the conduct of trade union

activities. This is the most severe charge against the outsiders. No body can condemn trade union leaders for having political views and political affiliations. What is really condemned is the conduct of the trade union affairs with a view to furthering the prospects of a particular political party or its ultimate goals. It is contended that trade unions are organisations which should work for the day-to-day interests of the workers rather than the ultimate reorganisation of the economic and social order in accordance with any particular ideology. However, before any conclusive assertion is made regarding the intrusion of political considerations in the normal functioning of the trade unions, the industrial relations' scene in India has to be examined in detail.

When economic demands are made and agitations started for the same under the exigencies of the political requirements of the party concerned, when negotiations with the employers are torpedoed as dictated by political situations, when strikes are caused without any dispute between the particular employer and his employees, when putting pressure upon the employers is not the main *raison de etre* of a strike, when strikes are intended to put pressure upon the government for the solution of political problems, it can be said that political considerations cast their shadow over industrial relations. This is called the exploitation of labour for political purposes and is frequently condemned as harmful to the cause of the Indian workers.

However, if a detailed analysis is made, it is difficult to prove the intrusion of political considerations in the day-to-day conduct of the activities of a trade union so far as the formulation of demands, the conduct of negotiations and the exercise of economic pressures are concerned. If one asks the employers and others, who allege that the Indian workers are politically exploited, to cite instances, they fail to point out concrete examples. This charge, though common to all outsiders, is particularly made against the communist leaders of the Indian trade unions but the employers who have recognised communist unions, when asked in private, affirm that the communist leaders in the trade union organisations act as pure and simple trade unionists, though they are militant and hard bargainers. It appears that the degree of militancy of a trade union becomes the indicator of the extent of political intrusion. A union, which is more docile, less militant and which rarely resorts

to strikes is said to be conducted on the trade union lines. On the other hand, a union which shows resistance to employers' dictates, strongly fights for workers' rights and does not submit easily is said to be politically oriented and inspired. This is a wrong standard to judge the extent of the intrusion of political considerations into the trade union affairs. The working conditions in industrial establishments, the attitude of employers, their personnel policy, the treatment meted out to the workers by the supervisors and the whole industrial environment are such as should have made the Indian trade unions more militant than what they have been. Therefore, any militancy on the part of a trade union should be hailed more as a sign of the growing trade union consciousness of the workers rather than as a symbol of their political domination.

It is naive to believe that the political leaders of the Indian trade unions resort to strikes for the sake of striking. Is there any trade union leader, political or otherwise, who is not cognizant of the disastrous consequences of going on strike in a light-hearted manner? Is he not aware that the failure of a strike spells disaster both for him and his union? Does he not know that a strike which is not backed by the loyalty and support of the workers will inevitably fail? Conscious, as the leader is, of the difficulties of leading a strike to successful conclusion under the existing Indian conditions, he rarely resorts to the weapon of strike in the first instance without exhausting all other means of peaceful settlement. Therefore, a serious thought to this problem will show that political considerations do not frequently enter into the day-to-day conduct of trade union affairs and the charge against the political leaders is more malicious than substantial.

However, when one comes to the general functioning of trade unions in the overall political life of the country, the political use of the Indian trade unions becomes more apparent. If one examines the frequency of general strikes in the country or in particular regions and the issues for which such strikes are called, the predominance of political considerations remains no longer hidden. During the days of the national struggle for independence, general strikes were frequently used to protest against the government's policy of repression and to show solidarity with the movement for independence. Since independence, general strikes have been called

for such political issues as the reorganisation of States on linguistic lines, proclamation of Presidential Rule in certain States, and release of political leaders. Further, political parties, in order to show their resentment against government's economic, fiscal, foreign or defence policies or against food shortages, rising prices and increases in bus and tram fares have often called for general strikes. Though the working class is deeply concerned with all these issues and workers' welfare is vitally linked to them, still the use of trade unions for these purposes may be said to be political. Trade unions, had they been led and controlled by inside leadership and not by political leaders, would not have, perhaps, so readily responded to such calls.

Another argument generally advanced against political use of trade unions is that workers may differ in their political beliefs but are united on such purely trade union issues as wages, hours of work, and working and living conditions. Therefore, trade unions could function in a unified manner if they could be divorced from politics. The political beliefs of the workers can be furthered by their respective political parties and trade unions should confine their activities to promoting the economic interests of the workers. It is further pointed out that trade unions led by inside leadership and left to themselves would not involve themselves in the political issues. It is the outsiders who bring in political considerations.

In this regard it should be borne in mind that the distinction between pure and simple trade union issues is disappearing rapidly under the impact of the changing economic and political scene. Further, even the inside leadership in many countries is developing political affiliations. In a situation where politics envelops every aspect of the economic life of the society, trade unions, whoever may be the leaders, would become political in character. In India and other developing countries, trade unions became political at a much early stage than in the industrially advanced countries.

Apart from the question of the intrusion of political considerations in the day-to-day working of the trade unions, another consequence of political leadership has been the lack of wholetime attention to the work of trade unions under the control of particular political leaders. As the political leaders have their eyes,

most of the time, on a seat either in the State or Central legislature, they seek to build as wide a following as they possibly can by having a large number of trade unions under their control.

It is not unusual for many of the trade union leaders to become the president of many such unions which they rarely visit. The attention of such leaders is divided between many unions, with the result, that their contribution to the working of any one of them is negligible. In many cases, a person gets himself elected as a president of a union not because his presidentship will bestow any advantages on the trade union but because it will further his political prospects. Further, in many cases, a political leader loses his hold over a trade union not because the workers have lost faith in him but because he has fallen in the estimation of his political bosses. Similarly, leadership of a trade union is maintained with the support of powerful politicians. In this way, the trade union and the interest of the workers come to occupy a minor place in the scheme of things that the leader has in mind. This has definitely a weakening influence on the trade unions and is a source of their instability.

It is also pointed out that many of these leaders are not conversant with the problem of the industry nor in the know of its technicalities. Consequently, they tend to become unrealistic in their approach and prone to make exaggerated demands which the industries under the existing conditions are unable to meet. This brings about unnecessary friction and tensions in industrial relations. However, it must be realised that a long association with a trade union in a particular industry may enable an outsider to pick up its intricacies. Every one who has had occasions to meet the trade union leaders of long standing has been impressed by their knowledge of the problems of an industry as well as of the working class. But again for a leader who is the president of a large number of unions spread over diverse industries, it is not possible to have a first hand acquaintance with the problems of each industry, particularly when his contacts with these unions are only nominal. Therefore, the allegation about the lack of knowledge of industrial processes and industrial problems is largely true in case of such leaders only.

### Factors Responsible for the Persistence of Outside Leadership

It is said that the trade union movement everywhere owes its origin to outsiders. The unforgettable contributions of persons like Hume, Marx, Francis Blake and Robert Owen and later on of the Webbs to early unions of Great Britain are known to all students of the British trade union history. Similarly, in France, Proudhon, Sorel and Pelloutier played significant roles in the growth of the French trade union movement. Gradually, with the maturity of the trade unions, inside leadership came up and outsiders became only sympathisers or theoretical exponents of the trade union movement. In India, however, outside leadership still persists and is a source of anxiety in many quarters. It is pertinent, therefore, to examine the factors which make for the continuance of outsiders in the Indian trade union movement.

In general, the following factors may be said to be contributing to the persistence of outsiders in the Indian trade union movement:

- (1) The relative immaturity of the Indian trade union movement;
- (2) Hold of political parties;
- (3) Sociological factors;
- (4) Fear of victimisation;
- (5) Illiteracy of Indian workers and language difficulties;
- (6) Small base of the Indian trade unions and their poor financial resources; and
- (7) The role of the State and the increased prestige of politicians.

#### *(1) The relative immaturity of the Indian trade union movement*

Though in the early stages of the trade union movement, outsiders everywhere played important roles, it is contended that when trade unions become mature, the need for outside leadership vanishes and inside leadership takes its place. In India, this has not happened, though the trade union movement has been in existence for about fifty years. Perhaps, a period of fifty years is not long enough to bring a trade union movement to maturity. The movement as a whole may be half a century old, but most of the Indian trade unions are much younger. They are still like babies as compared to the much older unions of the industrially advanced countries and hence are still in need of an outside support, a prop or a

helping hand. Therefore, it is not surprising that Indian trade unions continue to be led and guided by the outsiders.

### *(2) Hold of political parties*

The political origins of the Indian trade unions reinforce the continuation of the outside leadership. If the political parties set up trade unions with a view to furthering party prospects, it can very well be expected that they would seek to continue their stronghold on the trade unions by continuously providing their leadership. In this context, outside leadership assumes a permanent place in the trade union movement and no longer remains only a temporary phenomenon. It is easier for outside philanthropes to withdraw from the trade union movement when it becomes capable of standing on its own legs but it is not the case with the political leaders. When the career prospects of parties become intimately linked to trade unionism, neither the political leaders nor the political parties can afford to withdraw from the trade union scene. This is what is happening in India and will continue in the future also. Further, many of the political parties believe in the political ideology of organising the workers as a revolutionary force. They would continue to organise the trade unions because this is one of their creeds.

### *(3) Sociological factors*

Another important factor making for the persistence of outside leadership is the sociological background of both the workers and the employers. Most of the Indian industrial workers come from the rural areas where they and their families have been subjected to centuries of feudal exploitation, submission to higher castes and humiliation by money-lenders. Living in an authoritarian family under an authoritarian society, in grinding poverty, with an attitude of humble submission before the feudal lords and religious heads looking upon them as gods, the industrial workers lost a long time back the spirit of showing a challenge to authority. The tradition of meekly submitting to injustices makes the workers look upon the industrial employers, factory managers and supervisors with respect and awe as their bread-givers and even as gods. The long tradition of social oppression and inequality makes them uncomfortable if an occasion comes to them to meet their employer

or manager on a footing of equality. Instances are not rare when they have refused to sit on chairs around table in the presence of their employers. Under these conditions, they may shout slogans, participate in processions and may go on strikes, but when it comes to meeting the employers face to face, many of them still have a feeling of hesitation, shivering and shaking. At this stage, the middle class outsider, with prestige, educated and sophisticated, dressed in neat, clean khadi or trousers, comes as a saviour. He does not have a hesitating and faltering voice and can talk to the employer with an attitude of equality, if not superiority.

In the like manner, the employers, coming from the richer and higher strata of society, still nurse a feeling of not only economic but also social superiority. Many of them feel uncomfortable and do not like to sit with their employees on the basis of equality around the bargaining table. They would much prefer to deal with an outsider who is in no way socially inferior to them to talking with their socially inferior employees. In this context, the outsider in the trade union movement is not only a trade unionist but a vital link between the employers and the workers and is also a channel of communication between them. He does not only articulate the feelings and aspirations of the workers but also gives to them an organisational shape. Thus, the political needs of the outsider become fused with the sociological needs of the workers and the outsider becomes indispensable.

In many respects the scene is changing. Still, the strong influences of an authoritarian tradition continue to affect the minds of both the workers and the employers. Such changes are always slow. Until a complete transformation of the social background of both the workers and the employers takes place, the outsider will continue to play an important role in the Indian trade union movement.

#### *(4) Fear of victimisation*

Many of the Indian employers have not as yet reconciled themselves to the existence of trade unions. The employers still resort to punishing their workers under the pretext of disciplinary action for active trade union work. Therefore, many workers, with a capacity for leadership and capable of exercising a strong influence

on other workers, prefer to keep themselves in the background leaving the field free for outsiders whom the employers can never victimise. Thus, the fear of victimisation reinforces the deep-seated sense of inferiority bred by the sociological background of the Indian workers. These two together make the picture complete and it becomes extremely difficult for the rank-and-file of the Indian working class to bring to the fore its latent leadership qualities.

*(5) Illiteracy of Indian workers and language difficulties*

The extent of illiteracy prevalent among Indian workers is overwhelming. Even when they are literate, their linguistic competence is not adequate enough to enable them to follow the language of the labour laws, administrative and standing orders and collective agreements. In many cases, English still continues to be the language of the courts and legislation, thus necessitating the presence of such persons who are well-educated and who can argue the workers' view-point wherever so needed.

*(6) Small base of the Indian trade unions and their poor financial resources*

It has been pointed out earlier that the average size of the Indian trade unions is very small<sup>8</sup> and their financial resources are very meagre.<sup>9</sup> To maintain a full-time competent salaried staff and experts in economics, politics, laws, industrial engineering, etc. is impossible for them. Therefore, Indian trade unions have become dependent on the outside leadership which possesses an independent means of livelihood. Here, it is to be noted that the political needs of outsiders to have as many unions as possible under their control and influence are reinforced by the economic needs of small trade unions to have as their leaders top men without being required to pay for their maintenance.

*(7) The role of the State and the increasing prestige of politicians*

The increasing role of the State in the economic life of the

8. For details, see pp. 150-155.

9. For details, see pp. 155-161.

community, in general, and industrial relations, in particular, requires continuous contacts among trade unions, officials of the labour departments and others concerned with the formulation and execution of the government's labour policy. The trade unions today have to devote as much time and energy to dealing with the government as with the employers. Further, the existence of various tripartite machineries demand the presence of persons of political standing and social status to represent the cause of labour.

Therefore, the trade unions feel the need for such persons who have status and prestige behind them to influence the officers of the labour departments and the governmental machinery. It is easier for a politician to secure a speedy registration of trade unions, influence the government to refer a dispute to a tribunal, move the governmental machinery for the implementation of labour laws, and prevail upon the ministers of labour to exercise a restraining influence on the employers and to intervene in industrial disputes. Therefore, it so happens that workers, after forming a union even without the help of an outsider, approach an important political personality, preferably one who has a reputation of working in the trade union field, to assume the presidency of the union. Such a person gives a sense of strength to the union and his very name is enough to secure to the union a due recognition at the hands of the government. In many cases, such a president is needed for decoration and publicity purposes. Thus, the role of the State and the prestige of the politicians make it expedient for many unions, even when they can be effectively managed and run by the inside leadership, to seek the support of influential political leaders.

These are the factors making for the persistence of outside leadership in the Indian trade union movement. This review of the role of outsiders, their positive and negative contribution to the Indian trade union movement, and the factors responsible for their continuance shows that they are neither an unmixed evil nor an unmixed blessing. Any attempt to limit the role of outsiders in the Indian trade union movement has necessarily to take into account the factors mentioned above.

## **Distinction Between an Outsider and an Insider**

Is it possible to draw a demarcation line between an insider and an outsider? If inside leadership means that the union is led and its affairs are controlled by persons currently in employment in the establishment to which the union belongs, it will be seen that such a leadership rarely exists anywhere. Even in countries like Great Britain and the U.S.A., the real reigns of the trade union movement and even of particular unions are in the hands of such persons whose only qualification to be called an insider is that they had been workmen in their career sometime in the past. Such persons are not currently employed in any industry. What were the qualifications of Walter Reuther or George Meany or John L. Lewis—important personalities in the American trade union movement to be called insiders? Sometime in their life, they had handled picks and shovels, but later they became as much an outsider as S. A. Dange, S. R. Vasavada, G. Ramanujam, Michael John, Anthony Pillai and others—some prominent figures of the Indian trade union movement.

Even when one accepts that workers currently employed are insiders,<sup>10</sup> is a worker who is currently employed by factory A an insider for factory B in the same industry? Similarly, is a worker of the cement industry, if he happens to occupy an important position in a trade union of the sugar industry, an insider for the latter? Further, can a worker who sometime, may be many years back, worked in a coal mine for a brief span and now happens to be a leader of a trade union in an iron and steel factory, be called an insider? Does it free him from the disabilities of the outside leaders about whom so much has been said and written? It appears that neither past attachment to the industrial labour force nor current status as a worker provides a satisfactory basis for deciding as to who is an 'insider' and who is an 'outsider'.

Similarly, political beliefs and affiliations cannot be made a criterion for distinguishing between an outsider and an insider. The so-called insiders also may have their political beliefs and may bring them to bear upon their day-to-day trade union activities.

10. Under the Indian Trade Unions Act, 1926 any person not actually engaged or employed in the industry concerned is deemed to be an outsider.

Again, devoting whole-time attention to trade union work or its absence may be common to both the insider and the outsider. Dependence on trade unions for livelihood also cannot provide a satisfactory standard. It is these difficulties of defining an 'outsider' and an 'insider' that will clog any legislative attempt to limit or to prohibit the role of outsiders in the Indian trade union movement.<sup>11</sup> Imposing a legal ban on non-employees holding positions in the executive of the unions also did not find favour with the National Commission on Labour which considered it "too drastic a step."

### **NCL on Outside Leadership**

Recognising that "outsiders in the trade unions should be redundant by forces from within rather than by a legal ban", the National Commission on Labour has suggested the following measures for building up internal leadership:

- (a) intensification of workers' education;
- (b) penalties for victimisation and similar unfair labour practices;
- (c) intensification of efforts by trade union organisers to train workers in union organisation;
- (d) limiting the proportion of outsiders in the union executives;
- (e) treating all ex-employees as insiders; and
- (f) establishing a convention that no union office-bearer will concurrently hold office in a political party.<sup>12</sup>

These recommendations of the Commission, if implemented, may go a great way towards reducing the extent of outside leadership, but it is the implementation part that is likely to prove intractable. Victimisation and similar other unfair labour practices are even today to be taken care of by the courts, and adjudication machinery set up under the Industrial Disputes Act. The Trade Unions Act, 1926 restricts the proportion of the outsiders in the trade union executive and the actual proportion of outsiders on the executive of

11. See also Govt. of India, *Report of the National Commission on Labour*, 1969, p. 290.

12. *Ibid.*, p. 291.

trade unions is much below the limit permitted by law. Besides, "establishing a convention that no union office-bearer will concurrently hold office in a political party" is highly unrealistic under the political climate obtaining in India today.

### Futility of the Controversy

Any discussion on the nature and role of outside leadership in the Indian trade union movement should take into account the quality of internal functioning of the trade unions. If a trade union functions in a democratic manner, where office bearers are regularly elected and the ordinary member is free to exercise his choice to decide the persons who would hold offices in that union, the controversy regarding the insider and the outsider would have no meaning. Why should an employer or the government concern itself as to who is a leader of a union when that leader is elected in a free and fearless election? Preventing an outsider from becoming an office-bearer of a union also means restricting the freedom of the workers to elect their own trade union leaders. If the workers choose to be guided and led by an outsider in their trade union activities, the matter should end there. Only when the leadership is imposed and workers are prevented from exercising their right to freely elect a leader, the society should show its concern and anxiety. This anxiety should be there even when the imposed leader is an insider. As a matter of fact, the society should concern itself with the denial of freedom to the workers to elect their leader and not with the type of the leader that is elected.

This approach takes us to the origin of this controversy when the Trade Unions Act, 1926 imposed a restriction on the right of the rank-and-file of trade unions to choose the members of the executive committees. Section 22 of the Act provides that not less than one-half of the total number of officers of every registered trade union must be persons actually engaged or employed in the industry with which the trade union is connected. This section intended to restrict the number of outsiders on the executive of a registered trade union. What was the purpose of this restriction? Obviously, the purpose was to prevent the outsiders from occupying the majority of the offices in a trade union. And who were these outsiders?

Obviously again, the outsiders organising trade unions in industrial centres were mostly political workers, also participating in the national struggle for independence. The legislation sought to prevent these leaders from controlling the trade unions for the purpose of enlisting them in the fight for India's independence. The primary purpose of this section 22 was to insulate the Indian trade unions from the powerful current and the upsurge for liberation that had gripped the nation. However, one may also legitimately draw the inference that the purpose of section 22 was to promote the growth of internal leadership, but this would be the half-truth only. The main import of this section was to restrict the freedom of the workers to choose the office-bearers of their trade unions. This was an imperialist device both for the purpose of preventing the workers from expressing their aspirations as well as for preventing the national leaders from influencing the trade unions. In this context, therefore, such a restriction does not serve any purpose today and it is futile to indulge in the sterile controversy.

Therefore, the only practical policy that can be pursued in this regard is to leave the matter where it stands today. At the same time, educational opportunities should be provided to the workers, as is being done today by the Workers' Education Scheme in a limited manner, so that more active participation by the rank-and-file could be ensured. The character of the Indian labour force is changing. Persons with better education are joining the labour force everyday in increasing numbers. The broadening of the educational opportunities to all the children in the country will inevitably result in an educated labour force which will be capable of running the trade unions. It will be then that the role of the outsiders would be balanced by a more effective inside leadership and the evils of outside control would be mitigated. Even then one can very well predict that the leadership of the Indian trade union movement will still be a mixed bag with the political outsiders, perhaps, relegated to a secondary role.

## CHAPTER 9

### TRADE UNION RIVALRY AND RECOGNITION

One of the burning problems in the field of industrial relations facing the Indian trade union movement, the government and the employers is to evolve a satisfactory and commonly accepted way to settle the competitive claims of rival unions for recognition. The way the problem has been sought to be solved till now has brought disrepute to the government labour policy and has given rise to suspicion and accusations.

The Indian Trade Unions Act, 1926 provides that any seven persons can form a union and apply for registration. A registered trade union becomes a legal personality and is vested with certain immunities from civil and criminal liabilities in the conduct of trade disputes. The Indian Constitution includes the right to form associations under the fundamental rights i.e. workers are free to form their trade unions without any legal hindrance. It is not even necessary for a trade union to be registered in order to be recognised by the employer. This legal position, though facilitating their formation and growth, is a source of division and sub-division in the trade unions. Splits become easy and even small differences of opinion lead to the formation of rival unions and not much later they secure registration and become legal entities. In the context of political unionism this easy way of securing a legal status further facilitates the emergence of rival unions. They all start competing for recognition by the employers.

The Indian Trade Unions Act, though providing for registration, does not say anything with regard to recognition. The employers are legally free to recognise one union or more of their choice or even not to recognise any. As soon as a union secures recognition, it is resisted by the rivals, which ultimately disturbs industrial relations. In many cases, employers still resist recognition. Where an employer seeks to recognise a union, he does not know which union to recognise. Not infrequently, he is guided by his own political belief and the political affiliation of the union irrespective of its representative character.

Thus, the multiplicity of trade unions in the same bargaining unit gives the employer an opportunity to recognise a union of his own choice without the workmen having an opportunity of being represented by a union of their own choosing. In the context of the multiplicity of rival trade unions, collective agreements and collective bargaining cease to have much meaning. What is done by one union is sought to be undone by others. No sooner than the ink is dry on an agreement, fresh issues are raised by the rivals and strikes take place. Strikes are very frequent either for securing recognition or for the withdrawal of recognition secured by the rivals or for undoing the terms of an agreement with the rival. Therefore, the question of recognition of unions needs an immediate solution both from the point of view of resolving inter-union conflicts and of ensuring that collective agreements reflect the wishes of the workers.

### **Should Recognition be made Compulsory?**

Historically, the trade unions have extracted recognition from reluctant employers on the basis of their strength and use of economic pressures. Recognition of unions in the early stages tended to be voluntary for the employers who decided to recognise or not to recognise the unions on the basis of an appreciation of the risks of following the either course. Gradually, in many countries, the State has imposed legal obligations upon the employers to recognise trade unions as a part of the general policy of ensuring to the workmen the right to bargain collectively. The National Labour Relations Act, 1935 of the U.S.A. is an example par excellence of the

trend of making the recognition of trade unions statutorily obligatory on the employer. In Great Britain, the Industrial Relations Act, 1971 also recognises the claim of a trade union to have exclusive negotiating rights as a "sole bargaining agent". The National Industrial Relations Court is empowered to decide cases of recognition of sole bargaining agents in the event of the failure of the parties to decide the issues themselves either on their own or with the help of conciliation.

In India, the question still continues to be debated and many persons appear to be against any legal imposition in this regard. It is argued that a satisfactory relationship between the employer and the union of his workmen depends on mutual goodwill and appreciation. A legal obligation may bring about a formal recognition of the union but cannot create good faith and goodwill. Therefore, according to this view, the issue of recognition of trade unions should be best left to the unions and employers who should work out a satisfactory relationship on the basis of mutual understanding.

But it has to be borne in mind that though there is a growing tendency for the employers to recognise trade unions, there are many employers still reluctant to do so. Further, in a situation characterised by multiplicity of rival unions, leaving the employer free to recognise a union means leaving him free to choose any one of the competing unions. It may happen that the employer, in making his choice, chooses a union more amenable to his influence and control, rather than a union which voices the aspirations of the workers. In such cases the strifes and strains generated on account of non-recognition or recognition of a company-dominated union prove costly to the employers and the employees as well as to the society. If compulsory adjudication is a desirable policy in the interest of the maintenance of industrial peace, the same interest demands that the recognition of trade unions be made legally obligatory. The Indian Trade Unions (Amendment) Act, 1947 tried to make the recognition of unions compulsory for the employers, but, somehow or other, the Act could not be brought into force. However, in some States i.e. Bombay, Madhya Pradesh and Rajasthan, compulsory recognition of unions has been in practice for quite sometime. Lately, recognition of unions on a compulsory basis has also found

favour with the National Commission on Labour which has said, "It would be desirable to make union recognition compulsory under a Central law, in all undertakings employing 100 or more workers, or where the capital invested is above a stipulated size."<sup>1</sup>

### WHICH ONE OF THE UNIONS BE RECOGNISED ?

The moment one thinks of making the recognition of unions obligatory, one comes across the question of deciding as to which one of the many unions clamouring for recognition is to be recognised by the employers. Statutory and non-statutory measures, though of a limited character, have been adopted to settle the issue but the problem continues to agitate the minds of all concerned.

### Statutory Measures

*The Bombay Industrial Relations Act, 1946.* The Act was the first legislative measure in the country to find out a solution for the competing claims of the rival unions. The Act provides for the classification of registered trade unions as: (a) 'Representative Unions' (having a membership of not less than 15 per cent employees in any industry in a local area), (b) 'Qualified Unions' (5 per cent membership in any industry in a local area), and (c) 'Primary Unions' (15 per cent of employees in an undertaking). The order in which the unions in the local area are to get recognition is the same as indicated above. The Act confers upon unions in each category certain privileges and imposes certain obligations on them. In case no union has a recognised status, workers, may elect their own representatives or authorise the Government Labour Officer to speak on their behalf to the employer.

Similar provisions for recognition have been incorporated in the Acts of Madhya Pradesh and Rajasthan.

*The Indian Trade Unions (Amendment) Act, 1947.* Though the Act provides for the recognition of a trade union by the employ-

1. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 329.

er under orders of a Labour Court, still the Act does not debar the recognition of more than one union. Under the Act, the Labour Court is expected to pass an order on the application of a trade union. The Act further lays down the conditions which a trade union must fulfil in order to be entitled for recognition under the orders of a Labour Court. If there are two or more unions, each one fulfilling the conditions laid down, all become entitled to recognition. Directly, the Court is not entitled to pass judgement on the competitive claims of rival unions.

However, indirectly, the Labour Court may have to decide the acceptability of rival claims. One of the conditions which a trade union in order to be entitled to recognition must fulfil is that "it is representative of all the workmen employed by the employer in that industry or those industries." It is the duty of the Labour Court to investigate whether the applicant union fulfils this condition. Naturally, if after investigation, the Labour Court comes to the conclusion that a particular union is representative of all the workmen employed by the employer, it cannot simultaneously hold that another union is also equally representative of all workmen. Therefore, it appears that the Labour Court can order only one union at a time to be recognised by the employer. Had this Act been implemented, it could have provided a limited solution to the problem of competing claims for recognition. Nevertheless, the employer could have continued to recognise more than one union, if he so chose. The only obligation upon the employer under the Act is to recognise a union if so ordered by a Labour Court, but there is no corresponding obligation not to recognise other unions.

Further, under the Act, it is for the Labour Court to devise its own method of finding out the representative character of a union. At the same time, the Labour Court is required under the Act to take into consideration, though not bound by it, the percentage of union membership to the total number of workmen. It is not known what methods the Labour Courts would have adopted to verify the representative character, but the Act hinted that the percentage of membership could be one of the bases for deciding this character. As stated earlier, the Act has not come into force.

## Non-statutory Measures

### *Attempts in Bihar*

The first attempt in evolving a non-statutory method of settling claims of rival unions was made by the Bihar Central Standing Labour Advisory Board in 1952.<sup>2</sup> The resolution adopted in the meeting provides:

- (1) Any number of unions can be registered in a plant, but before registering a new one, the Registrar of Trade Unions will examine carefully the claims of the one claiming registration. (Under the Trade Unions Act, 1926, any union representing seven members can be registered).
- (2) The employer must recognise at least one of the registered unions, and in granting this recognition he must take care that he recognises the one most representative of the workmen. The employer should deal with the recognised union on questions affecting all workmen, such as bonus, hours, leaves, etc., but he should be willing to hear individual grievances presented on behalf of its members by minority or rival unions.
- (3) When there is a dispute about the representative character of unions for the purposes of recognition, the Labour Commissioner will try to determine the representative character after taking into consideration the membership and such other evidence as may be produced before him.
- (4) Voting by secret ballot will be taken only in extreme cases, and as last resort. Voting, if necessary, will be restricted only to members of the registered unions and the rival union should secure at least 75 per cent of the vote of all member workmen before it can dislodge the existing recognised union. Casual and temporary employees of less than twelve months' continuous service are excluded from voting.
- (5) Recognition granted to the most representative union, as a result of a vote, is not to be disturbed for one year.

2. Resolution adopted at the meeting of Bihar Central Standing Labour Advisory Board on January 23, 1952.

Under the terms of the Resolution, the Labour Commissioner, Bihar has been trying to resolve disputes about the representative character of unions for purposes of recognition. In the beginning even resorts to secret ballots were taken in some cases.<sup>3</sup> Ballots were confined only to the members of registered unions as demanded by the Resolution. However, dissatisfaction with the procedure adopted in 1952 continued. Therefore, in 1959, another Resolution was adopted by the Government of Bihar,<sup>4</sup> taking into account the decisions arrived at the Indian Labour Conference held at Nainital in May, 1958 and those at the 17th Meeting of the Bihar Central (Standing) Labour Advisory Board held in February, 1959. The new Resolution mostly reiterated the principles adopted by the 1952 Resolution; the important change being the increase in the period from one year to two years for which recognition once granted was to continue and the secret ballot to be conducted, notwithstanding any disagreement or non-participation of any of the parties to the dispute.

### *Attempts at the Centre*

At the central level, the 16th session of the Indian Labour Conference held at Nainital in May 1958 adopted the following set of criteria under the Code of Discipline for the recognition of trade unions:

- (1) Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration. Where there is only one union, this condition would not apply.
- (2) The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding the reckoning.
- (3) A union may claim to be recognised as a representative

3. e.g. Rohtas Industries (Dalmianagar) and Motipur Sugar Factory.

4. Resolution of the Department of Labour and Employment, Govt. of Bihar, dated March 11, 1959.

union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area.

- (4) When a union has been recognised, there should be no change in its position for a period of two years.
- (5) In case of several unions in an industry or establishment, the one with the largest membership should be recognised.
- (6) A representative union for an industry in an area should have the right to represent the workers in all that establishments in the industry, but if a union of workers in a particular establishment has a membership of 50 per cent or more of the workers of that establishment it should have the right to deal with matters of purely local interests, such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for the industry or seek redress directly.
- (7) In the case of trade union federations not affiliated with any of the four central labour organisations, the question of recognition would have to be dealt with separately.
- (8) Only unions which observed the Code of Discipline would be entitled to recognition.<sup>5</sup>

## RECOGNITION OF MAJORITY UNION AND PROBLEMS INVOLVED

In spite of these resolutions and enactments, multiplicity of unions and mutual rivalry continue unabated. The need for evolving a solution for the competing claims is recognised on all sides. It is also recognised that with the constitutional guarantee of the freedom of association, formation of rival unions cannot be legally prohibited. What is needed in this connection is that one of the rivals be selected as the sole bargaining agent to represent the workmen for the purposes of collective bargaining so that industrial relations at the plant or industrial level could become a little more stable. A parallel can be drawn from the political structure of the country. There are rival political parties claiming and trying to gain popular support in order to be able to form the government

either at the Centre or in the States or both. The Constitution provides for periodic general elections and the party or parties securing majority of seats in the legislature become entitled to form the government for the period they continue to enjoy the majority support. The rest of the parties remain in opposition trying to obtain majority at the next elections i.e. periodic elections provide a peaceful method of settling the competing claims of rival political parties. The rival trade unions may be compared to the rival political parties. Each union, like a political party, is trying to secure recognition by the employer in order to be able to form the government of the enterprise jointly with the employer. How to decide which of the unions should be vested with this privilege? This is the crux of the problem of trade union recognition in the situation where rivalry exists.

There are three important aspects of this problem: (a) how to decide the representative character of rival unions?; (b) what should be the size and nature of the unit for the purpose of determining the representative character of the unions?, and, (c) what should be the role of the minority unions, if the majority union is to be recognised to form the government?

#### **(a) Criteria to Determine the Representative Character of Unions**

Two methods, namely, verification of membership and secret ballots, have generally been suggested and occasionally adopted for the purpose of determining the representative nature of the rival unions.

The respective membership figures of rival unions may indicate their relative representativeness. However, the way membership figures are recorded, union dues collected and accounts of income and expenditure maintained leaves much room for doubt. In many cases, this emphasis on membership figures induces the trade unions genuinely to build and increase their regular membership, but in many other cases, there is a competitive tendency to inflate the membership artificially. Even if the membership figures are taken at their face value, if necessary with proper verification, they can serve the limited purpose of only roughly determining the relative representative character of the competing unions.

The supporters of the verification of the fee-paying membership, while making submissions before the NCL, held that a regular pay-

ing membership would ensure financial viability of a union and enable it to discharge its responsibilities effectively. They conceded that membership could be open to inflation and even manipulation, but according to them, the remedy would be to introduce a greater measure of vigilance in verification arrangements, if necessary, by entrusting them to an impartial authority. They further claimed that regular payment of union dues, on which verification relied, would itself be an open vote of workers in the favour of a union which submitted to verification. As pointed out earlier, this argument is not tenable in view of the fact that membership records and accounts of subscriptions are in general in an unsatisfactory state and at the same time the method does not give any guarantee against the adoption of questionable ways of boosting membership. Moreover, the procedure involved in verification often involves considerable delay. It has further been contended that sampling method, however effective in other aspects of human activity, should not be used in the sensitive area of union recognition.<sup>6</sup>

It may be correct to some extent to rely on the membership figures of the INTUC, the AITUC, the HMS and the UTUC to decide as to which of these federations has the largest membership for the purpose of representation at the ILO. But to what extent is it fair to rely on the membership figures for determining the sole bargaining agent from amongst the unions operating at the plant level, each one claiming only a fragmentary percentage of the total employees? Does it appear fair again to say that a union claiming 25 per cent of workers as members should become the sole bargaining agent for certain purposes in preference to the others which claim a slightly smaller percentage?

It is possible in many cases that no union is able to establish its claim to have enrolled the majority of workmen at a particular work-place. The system of verification will decide only the relative representativeness. But what is needed for stability in industrial relations is that the recognised union functioning as a bargaining agent should be able to claim the support of at least the majority of workmen, if not of the overwhelming majority. It is the repre-

6. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 330.

sentative union alone which can be expected to make a commitment on behalf of the workers and also to stand by it. The method of verification will not be able to establish this. However, in the representational election the majority of workmen may collectively vote for a union, though individually, they may be members of different minority unions. Therefore, in a situation characterised by the existence of minority unions only, plebiscite through secret ballots appears to be the only correct method of establishing the representative character of a union.

In India this practice has not been tried except in a few exceptional cases. The main argument against a resort to secret ballots, whether open to all workers or only to union members, for the purpose of determining the representative character of union centres round the fear of the workers being misled by wild and irresponsible promises. It is argued that illiterate and ignorant workers, not knowing where their true interests lie, may be swayed by irresponsible promises made by the leaders of 'some unions'. By 'some unions' is generally meant the unions under the domination of the leftist political parties, particularly, the Communist Party. It is feared that the unions, which shout the loudest, use the most offensive language against the employers, the government and the rivals and promise the largest gains in the shortest possible time will win the election conducted on the basis of secret ballots. Under such conditions, the unions which are mild in their approach and responsible and responsive in their behaviour will suffer a serious handicap.

Perhaps, these arguments do contain a grain of truth, but they rest on the gullibility of the Indian workers who, it is apprehended, can be easily misled. While making their submissions before the NCL, the opponents of the secret ballot denounced it on the ground that "it would introduce topical issues about which a union may not be directly concerned as a union and create an election atmosphere, with some leaders making promises which they will never fulfil."<sup>7</sup> According to them, workers in our country "are not yet used to making a rational choice of what is good and creative when confronted with demagogic slogans and rousing of emotional senti-

7. Govt. of India, Report of the National Commission on Labour, 1969, p. 330 par. 23.52.

ments which can be whipped up over any industrial or non-industrial issue.<sup>8</sup>

If the aforesaid arguments were correct, the same wild promises would have brought the largest membership to the left-wing unions. If irresponsible promises can sway workers to vote one way, they can also sway them to enrol as members. On the basis of verified membership, the INTUC has the largest strength.<sup>9</sup> How is it that INTUC with its mild and responsible approach has been able to surpass the left-wing unions in the total membership enrolled? The workers choose one union amongst many for the purpose of becoming its members. If this choice is conscious, the same consciousness will prevail at the time of elections for deciding the representative character. Further, the Indian workers, like all other citizens of the country, enjoy the right to vote in the elections for the State and Central legislatures. If vesting the workers with the right to decide the representative character of unions through a secret ballot is dangerous, permitting the same workers to exercise the right to vote in political elections will, perhaps, be no less dangerous.

While deposing before the National Commission on Labour, supporters of secret ballot put forth emphatically that it was the most democratic way of expressing a choice. "Processes similar to those used in choosing the Government of a country are well recognised by workers; the basis of representation in industrial democracy need be no different from that of any other institution... the Indian worker is now grown up to know what is good for him and to make a rational choice. If he can be discerning in the choice of political leaders, it would not be right to deny him the responsibility of choosing representatives who will give him economic satisfaction. The fear of wild promises and rousing of passions swaying the worker can be exaggerated. Such false promises cannot be expected to win ballots all the time."<sup>10</sup>

In view of what has been said in the preceding discussions, it is clear that the acceptance of the principle of secret ballots for

8. *Ibid.*

9. See pp. 136-140.

10 Govt. of India, *Report of the National Commission on Labour, 1969*, p. 330, par. 23.53.

determining the representative character of unions is democratic as well as practical in the Indian context of today.

However, there is one further aspect of this problem. If it is accepted that a plebiscite is a better method for the determination of the bargaining agent, which workers should be entitled to participate in the plebiscite and at what level the representational plebiscite should take place?

Amongst the supporters of the plebiscite, there are two schools. One claims that only union members should be allowed to participate in such plebiscites. The other school says that the plebiscite should be open to all workers, irrespective of their union membership. A collective agreement is binding on all the workmen—members and non-members alike. If this be so, the non-union members working in a plant or industry should also have a say in deciding the union which is going to represent them and also bind them by a collective agreement. Under the existing Indian conditions, when, for various reasons, the majority of workers still continue to be unattached to any of the unions, it becomes all the more necessary that representational elections should not be confined to the members alone.

The reasons that have prevented the majority of Indian workers from becoming trade union members are many. Some of the workers may not want to undergo the risks which still are attendant upon union members; a few others may not want to pay and perhaps cannot afford to spare even the very low union dues; others may be deterred from taking sides between competing rival unions; and still many others may not have as yet realised the importance of the trade union as an effective instrument of protection. Many of the unions are also not able to conduct massive organising drives for they do not have a sufficient number of trained active workers to contact the mass of workmen for enrolling them as union members.

It does not, however, mean that when opportunities are given to the non-members they will not be able to make a reasonable choice between two or more unions to represent them for the purpose of collective bargaining. Any arrangement which neglects the wishes of the vast bulk of the non-union members will prove ineffective and detrimental to the maintenance of peaceful industrial relations. This has been demonstrated times without

number. If it is accepted that non-members employed in a particular establishment should also have a say in determining the bargaining agent, it is clear that the only way in which this can be done is through secret ballots open to all workers in a particular unit.

### *NCL on recognition of trade unions*

Here it is pertinent to refer to the recommendations of the NCL in this regard. The Commission noted serious differences over the manner in which the representative character of a union for the purpose of giving recognition is to be determined. Both the views i.e. (a) retaining the system of verification of the fee-paying membership of the unions, and (b) elections by secret ballot were put forth before the Commission with equal emphasis. The Commission, after carefully examining the *pros and cons* of both the views, held:

Much of the opposition to membership verification today is the outcome of fears of manipulation and interference by the administrative authority, fears which are not always unfounded. It is reasonable to expect that verification will become more acceptable, if entrusted to an independent quasijudicial authority. Similarly, election by secret ballot may find favour with those who now oppose it, when an independent authority conducts it, strictly according to accepted regulations. The best course, therefore, seems to be to leave the choice of method, in any particular case, to the discretion of an independent authority. We suggest that this task be entrusted to the Industrial Relations Commission(s) proposed by us. The Commission will have the power to decide the representative character of unions *either by examination of membership records, or if it considers necessary, by holding an election through secret ballot open to all employees.*<sup>11</sup> We are confident that this proposal would be welcomed by all parties. The Commission would deal with the recognition work in its various aspects: (1) determining the level of recognition—

11. S.R. Vasavada, G. Ramanujam and R.K. Malviya (all INTUC members) gave their note of dissent.

whether plant, industry, centre-cum-industry—to decide the majority union, (ii) certifying the majority union as the recognised union for collective bargaining, (iii) generally dealing with other related matters. The union thus recognised will retain its status for a period of two years and also thereafter till its status is effectively challenged.<sup>12</sup>

As regards the qualifications for recognition, the Commission made the following recommendations:

A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of the workers in the establishment. If it is for an industry in a local area, the minimum membership should be 25 per cent. Where more unions than one contend for recognition, the union having a larger following should be recognised.<sup>13</sup>

#### (b) Levels of Recognition—Plant/Locality/Industry

While discussing the structure of the Indian trade union movement, it has been pointed out that, as elsewhere, trade unions have been formed on a variety of bases in India. There are craft unions at the locality and industry levels. Similarly, there are industrial unions at the plant and locality level and they have also formed their industrial federations. Therefore, the problems of union recognition automatically involve the question of deciding the levels at which the unions are to be recognised. Even if it is conceded that the union commanding the majority of employees be recognised, the issue of deciding the unit over which the majority is to be counted still remains open.

An example will clarify the various aspects of the problem. Let us take the Indian cotton textile industry. The cotton textile mills are spread over the whole of the country with a few leading centres like Bombay, Ahmedabad, Kanpur, Sholapur, Coimbatore, Madras and Delhi. In this industry there are many unions func-

12. Govt. of India, *Report of the National Commission on Labour, 1969*, pp. 330-331, par. 25.36.

13. *Ibid.*, p. 329, par. 23.50.

tioning only at the plant level, a few others at the locality level and there are federations at the industry level. A union recognised as the representative for the industry as a whole may not have much following in a particular locality; a union recognised as the majority for the locality may not have any following in many of the mills in the same locality; and a union recognised as the representative for a mill may not have any member in important sections of the mill which may have been organised on a craft basis. Therefore, for a craft one union may be the majority union, for the mill another, for the locality the third one and for the industry the fourth one.

A question then is what should be the appropriate unit or level of recognition? If the purpose is to recognise a union which reflects the wishes of the majority of workers, the levels of recognition would keep changing according to the wishes of the workers. The workers of a particular mill organised under a separate union may rightly resent if a union, which though commands the majority in a locality but without any following in that mill, is authorised to represent them. So again, what is the appropriate unit—the locality or the mill? If the same union which commanded the majority in the industry as a whole also commanded majority in every centre, every mill and every craft, the question of the level at which a union has to be recognised would be of no significance. But, the likelihood of the existence of such a situation in any of the Indian industries is rare. That is why the NCL also had to deal with this question of the level of recognition and recommended that the decision in this regard be left to the proposed Industrial Relations Commission.

The problems of union recognition in this regard are similar to the problems involved in political representation. What is called here the unit of representation is like a constituency for political elections. Students of the Indian political scene know how a political party may win the parliamentary seat, though it may lose all the assembly seats falling within that parliamentary constituency. Similarly, a political party may win the assembly seat and still lose all *panchayat* or *panchayat samiti* elections falling within that assembly constituency. With the variations in the nature and size of constituencies, the relative strength of the different parties also

changes. The appropriate unit or constituency of political representation has also been a matter of controversy.

However, for political representation, the matter is not that acute because the functions and powers of the different administrative units are clearly defined and, for different purposes, different constituencies can aptly be prescribed. A local authority is vested with certain legislative and administrative powers and responsibilities only for a particular locality in respect of certain matters. Similarly, a State legislature has its own jurisdiction in matters of legislation as different from the jurisdiction of the Central legislature.

If the units or levels for the union recognition could be clearly defined and demarcated for different purposes and, if the functions and responsibilities of the unions were such which could be assigned to different levels, the issues of the level of union recognition could be easily resolved. But the functions of the different unions organised on different bases are more or less the same and overlapping. A union which functions at the level of a particular locality, such as the Rashtriya Mill Mazdoor Sangh or the Girni Kamgar Union, Bombay, performs the same functions and discharges the same responsibility as another union functioning only at the mill level. If the issues concerning the industry in a particular locality are reserved for the union functioning at the locality level, not much is left for the union functioning at the mill level. Similarly, the issues are overlapping between the national federation and the locality level union. It is easier to say that the national federation will deal with the issues concerning the industry as a whole, the locality level union with the issues affecting the industry in that locality only, and the plant level union with the issues concerning the plant alone, but the actual demarcation becomes difficult and complicated and unions resent encroachment on their jurisdictions and powers. The complicated nature of the issues has been clearly demonstrated by the ineffectiveness of the recent agreement between the Rashtriya Mill Mazdoor Sangh and the cotton textile mills, Bombay regarding a seven-day working week. The Rashtriya Mill Mazdoor Sangh is the recognised union for the Bombay cotton textile industry, but majority of workers in many of the mills belong to unions under the control of the AITUC.

and the HMS. As these unions were not the parties to the agreement, they have defied it and the prospects of the agreement being implemented are meagre.

If the unions recognised at higher levels become effective, the unions at the lower level run the danger of being reduced to non-entities. Already, the Wage Boards have restricted the role of unions at the plant level in the matter of wage determination.<sup>14</sup> If the federations and the locality level unions take over the issues regarding other terms and conditions of employment, the plant level unions will cease to have any effective voice in the determination of the terms and conditions of employment, which is the very foundation of the existence of a trade union.

This brings another aspect of the problem to the forefront. Will it be conducive to industrial democracy if more and more decisions regarding terms and conditions of employment are taken by persons and at centres far removed from the mass of the workers? Will it be conducive to the maintenance of industrial peace and to the establishment of cordial relations between particular employer and his employees if both of them have little say in matters in which they are vitally interested and decisions about which are imposed from above? The convenience of negotiating one agreement and standardising the terms and conditions of employment for the industry as a whole may dictate the need for a centralised decision-making machinery, but this is likely to hamper initiative and emergence of industrial democracy at the local level.

In brief, in deciding the levels of union-recognition, the following points will have to be borne in mind:

- (1) As the overwhelming majority of unions in India function at the plant level, a plant will have to be the main base for union recognition.
- (2) An appropriate balance in the matter of the level of union recognition will have to be arrived at between the need for standardising the terms and conditions of employment for the industry as a whole, on the one side, and the need for encouraging local initiative and local democracy, on the other.

14. See P.R.N. Sinha, *Wage Determination*, pp. 273-282.

- (3) The consideration of improving relations between the employer and his employees will also be important and care will have to be taken that they do not become completely ineffective in deciding matters which affected their relations.

### (c) Rights of Recognised vs. Minority Unions

The discussions so far have proceeded on the assumption that the law should provide for compulsory recognition of the union commanding the support and allegiance of majority of workmen in a particular unit. The next problem that immediately crops up is in regard to the respective roles of the recognised majority unions and the unrecognised minority ones, if any. It is clear that unless an understanding is reached about their respective roles, the very purpose of compulsory recognition will be defeated. There is not much controversy regarding the role of the recognised union. The Indian Trade Unions (Amendment) Act, 1947 (unimplemented so far) has said, "The executive of a recognised Trade Union shall be entitled to negotiate with employers in respect of matters connected with the employment or non-employment or the terms of employment or the conditions of labour of *all or any of its members*, and the employer shall receive and send replies to letters sent by the executive on, and grant interviews to that body regarding such matters." This section confers upon the recognised union the right to enter into negotiation with the employer for all or any of its members, but the recognised union does not enjoy the right to bargain on behalf of the non-member employees nor does the union become the sole bargaining representative.

### *NCL on the rights of recognised unions*

The NCL has gone a step further and has recommended conferring upon a union recognised as representative union the right of sole representation of workers in the unit. In addition, certain other exclusive rights and facilities have been recommended by the NCL for the representative union "to enable it to effectively discharge its functions." These rights include the following:

- (i) to raise issues and enter into collective agreements with employers on general questions concerning the terms of employment and conditions of service of workers in an establishment or, in the case of a representative union, in an industry in a local area;
- (ii) to collect membership fees/subscription payable by members to the union within the premises of the undertaking, or demand check-off facility;
- (iii) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed, and affix or cause to be affixed thereon, notices relating to meetings, statements of accounts of its income and expenditure and other announcements which are not abusive, indecent, inflammatory or subversive of discipline;
- (iv) to hold discussions with the representatives of employees who are the members of the union at a suitable place or places within the premises of office/factory/establishment as mutually agreed upon;
- (v) to meet and discuss with an employer or any person appointed by him for the purpose, the grievances of its members employed in the undertaking;
- (vi) to inspect, by prior arrangement, in an undertaking, any place where any member of the union is employed;
- (vii) to nominate its representatives on the grievance committee constituted under the grievance procedure in an establishment; and
- (viii) to nominate its representatives on statutory or non-statutory bipartite committees, e.g. works committees, production committees, welfare committees, canteen committees, and house allotment committees.<sup>15</sup>

Whereas the Indian Trade Unions (Amendment) Act, 1947 is completely silent on the rights of minority unions, the NCL has recommended that minority unions be allowed only the right to represent the cases of dismissal and discharge of their members before the Labour Court.

15. *Ibid.*, p. 331, par. 23.57.

The Act of 1947, however, does not prohibit the employer from entering into negotiations with a union other than the one recognised under the Act. It is further clear that the law cannot prohibit the formation of unrecognised rival unions for such a prohibition would be unconstitutional, undesirable and impractical under the existing conditions. If the minority rival unions cannot be legislated out of existence, can they be permitted a certain legitimate restricted role?

### **Role of Minority Unions**

One demarcation that is commonly suggested relates to general and individual cases. It is said that the recognised majority union should deal with the general terms and conditions of employment. The minority union can be permitted to take up individual grievances in respect of the implementation of the rights arising from an agreement or from law i.e. it should be legitimate for minority unions to take up the complaints of their members to the employer and the government, as the case may be. The NCL considered this view-point, but rejected it under the apprehension that this would reduce the strength of the majority union. But the very fact that a minority union exists and will continue to function irrespective of the wishes of the majority union will always be threatening and a source of irritation and friction. Therefore, minority unions will have to be integrated into the industrial relations system of the country by providing them a legitimate active role.

The right of the minority union to take up the individual grievances is also important from another view-point i.e. the protection of the right of individual workmen. The individual workman should have the right to get his grievances adjusted either through the majority union or through another union of his choice or by acting independently on his own. If the individual workmen are given this right, the corollary would be that it would be legitimate for minority unions to take up such grievances so long as any adjustment of the grievances is not inconsistent with the provisions of an agreement with the majority union.

Should minority unions be permitted to call for a strike? Should they have the right to collect union dues, put up notice boards and display notices on the work-premises? Minority

unions, so long as their role is limited to taking up individual grievances, cannot be permitted to call for strikes. But at the same time, they can be allowed the facilities to put up notices and collect union dues on work-premises provided they can demonstrate that they possess the strength prescribed for the purpose.

### **Recognition of the Majority Union by the Minority Union**

Whatever may be the legal and institutional arrangement for dealing with the problems of rivalry and rival unions, no solution can come unless the minority union recognises: (a) that there is a majority union, (b) that the majority union has a certain legitimate role to play, and (c) that the minority union, so long as it is in minority, has only a restricted role. Similarly, the majority union will have to recognise that the minority union has the right to strive to become the majority union by serving its members in all legal ways. However, this mutual recognition will come only when the majority status is really an earned status and not a conferred one by political manoeuvring.



## CHAPTER 10

# INDUSTRIAL RELATIONS—DEFINITION AND MAIN ASPECTS



### Definition

The Labour Dictionary defines “industrial relations” as “the relations between employers and employees in industry.”<sup>1</sup> According to Dale Yoder, “industrial relations” describe “relationships between managements and employees or among employees and their organisations, that characterise or grow out of employment.”<sup>2</sup> In order that the term “industrial relations” could cover every sector of the labour force in all parts of the world, the International Institute of Labour Studies has defined it as “social relations in production.”<sup>3</sup> Today this term stands for such a wide variety of practices and institutions and has been used in so widely divergent contexts that to define it in a manner so as to cover at least the core is an extremely complicated task. However, a few elements of this term are clear. These are:

(a) That originally the term stood for employer-employee relations in an industry.

(b) Later on, when the workers organised themselves into trade unions and the latter started dealing with the employers,

1. P.H. Casselman, *Labor Dictionary*, p. 197.

2. Herbert G. Heneman, Jr. and John G. Turnbull (eds.), *Personnel Administration and Labor Relations*, p. 5.

3. International Institute of Labour Studies, *Bulletin No. 10*, 1972, p. 3.

trade union activities also came to be included under this term.

(c) Still later, when the relations between employers and employees came to be vested with public importance and ceased to be private, the State had to be involved itself in such relations. Therefore, the activities of the State designed to modify, regulate and control relations between employers and employees also became a part of "industrial relations".

(d) The term "industry" is no longer confined to a small segment of economic activity, but has come to include all gainful employments, including service under the State. The relationship between the State and its employees has also come to acquire many of the characteristics and features of the employer-employee relationship in the industry. Therefore, employee-employer relationship under public services has also come to be covered by the term.

Considering all these elements mentioned above, the term "industrial relations" can be taken to stand for employee(s)-union(s)-employer(s)-government relationship in employment. As the term indicates, industrial relations spring from the contacts between employers, employees and their trade unions. Such relations and contacts prevail at various levels and in various forms such as the relations between a single employer and a single union of his employees, between a single employer and more than one union or between many employers organised on one side, and many unions grouped under federations, on the other.))

The modern industrial organisation is based upon two large aggregates: (a) accumulation and aggregation of large capital, and (b) aggregation of a large number of workers organised under trade unions. The availability and supply of a large quantity of capital and of a large number of workers divorced from any ownership of the means of production is the *sin quo non* of the establishment and the growth of modern industries. The centre of industrial relations is the coming together of these two big aggregates. Used narrowly, the term "industrial relations" covers industrial employments only, but in a wider sense it covers public employments also.

### Evolution of Industrial Relations

( The origin of industrial relations lies in the employer-employee

relationship. The moment workers are divorced from any ownership of the instruments, materials and means of production, they become wage earners depending for their livelihood upon wages alone. The people who own the instruments and materials of production become their employers and own the product. In the beginning of the modern industrial society, the economic system consisted of a large number of small competitive businesses and industrial establishments, each employing a small number of workers. The relationship between an employer and his employees was informal, personal and intimate but with the growth of the giant-sized joint-stock companies and business corporations, each employing in many cases thousands of workers, the relationship between the employer and his employees is no longer intimate and informal. Formal institutions have grown up to regulate this relationship. Such factors as the intervention of the State, the growth of trade unions and their federations, employers' associations, the growth of sciences of personnel management, industrial psychology and industrial sociology have all tended to influence the spirit and the course of the relationship between employers and employees.

These factors have changed the nature of the employer-employee relationship and have converted this private relationship into a relationship of public importance affecting the welfare of the community as a whole. One can no longer talk of the employer-employee relationship as the private concern of the employer and his employees only. The maintenance of industrial peace and the smooth functioning of industrial relations are one of the basic requirements of public welfare. The trade unions and their federations of today as well as the large business corporations separately command an aggregate of power which can be used both for the welfare as well as for the disruption of society. The struggle between these two wings of industrial relations fighting for the sharing of the joint products of labour and capital is not a scene which one can view with equanimity. The result is that the problems of industrial relations, such as strikes and lockouts, industrial discipline, hiring and firing, promotion and transfer, payment of wages, bonus and fringe-benefits have become essentially acute and demand understanding and constructive solutions.

## ✓ Two Dominant Aspects of Industrial Relations

There are two important aspects of the industrial relations' scene in a modern industrial society: (1) cooperation, and (2) conflict.

### (1) *Cooperation*

Modern industrial production is based upon cooperation between labour and capital. Here labour stands for the workers who man the factories, mines, and other industrial establishments or services. Capital stands for the owners of business enterprises who supply the capital and own the final products. The cooperation between the two is one of the basic requirements for the functioning of modern industries and the growth of industrialisation. This needs no further elaboration as it is clear that large factories and other business establishments cannot run successfully unless there is close cooperation between labour and capital. The very fact that the present industrial organisation and the economic structure has been able to turn out a quantity of goods and services unprecedented in the history of mankind is an index of the extent of cooperation between the two. Cooperation is the normal feature of industrial relations. However, this cooperation flows from the pursuit of self-interests both by the owners of capital and the owners of the labour power i.e. workers. The owners of economic enterprises offer employment, wages and other amenities of life to the workers. The workers in their turn offer their services. Thus, there is a fair degree of give and take and serving of mutual interests which is at the base of cooperation between them.

But this cooperation is of a minimal degree and is nothing more than the mere coming together of the labour and capital or the union and the management, and is devoid of any voluntary choice of, and regard for, the other as a partner. It flows from the necessity that some sort of working relationship has to be reached in order that the factory operations, on which both are dependent, may continue. Thus, it is a necessitous and functional cooperation, in the absence of which, neither of the parties can satisfy its interests.<sup>4</sup>

4. For detailed discussions of Cooperation, see Chapter 13.

## (2) Conflict

The second aspect of the system of industrial relations obtaining today is the existence of conflict. Conflict, like cooperation, is inherent in the industrial relations set up of today. It becomes apparent when industrial disputes resulting in strikes and lockouts become frequent. The prevailing industrial unrest, the frequency of work-stoppages resulting either from strikes or lockouts, and the slowing down of production are the occasional expressions of the ever-present and latent conflict between workers and the management.

The daily newspapers give enough indication of the existence of industrial conflict. The maintenance of an elaborate machinery by the State for the prevention and settlement of industrial disputes flowing from industrial conflict is an indication of its extent and depth. In the case of physical health we rarely pay any attention to it so long as we are healthy; similarly, so long as industrial peace prevails and production of goods and services continues uninterrupted, there is little talk of cooperation between labour and management, but any work-stoppage caused by strikes or lockouts is hotly discussed and debated, solutions are suggested and remedies adopted. Thus, it is clear that the industrial relations' picture consists of two dominant aspects: (a) cooperation and (b) conflict, both of which need further discussion and elaboration.<sup>5</sup>

Of the two, let the second trend i.e. conflict be discussed first.

### Nature of Industrial Conflict

Industrial conflict is human conflict. It is just one aspect of the general conflict inherent in the capitalist society based upon the pursuit of self-interest in the economic life by every individual and the group to which he belongs. If an economic and social order is based upon the open acceptance of the principle that each individual is the best judge of his self-interest and he should be free to pursue this interest, conflict becomes inherent in that order. The industrial conflict between labour and capital is one manifestation of this all-pervasive conflict in the capitalist society. The

5. Further discussions of Cooperation have been made in Chapter 13.

coming together of workers motivated by their urge of obtaining the highest possible wages and the owners of capital motivated by profit maximisation is the basic cause of industrial conflict in the capitalist economic system. The products of the joint efforts of labour and capital i.e. the output or the proceeds of an enterprise being limited at a particular time, if more goes to labour in the form of higher wages and other amenities of life, less is available for profits to the owners of capital resources. Thus, at a particular moment of time, the satisfaction of the interests of labour conflicts with the pursuit of the interests of capital and the two groups become antagonistic to each other.

It has to be realised that this conflict is like the conflict between any buyer and seller. The seller seeks to sell at the highest possible price that he can extract and the buyer seeks to pay the lowest possible price. The workers are the sellers of the commodity—their labour power, and the employers buy this commodity. Even though the ILO may declare that “labour is not a commodity to be sold and purchased”, it continues to be so. Naturally, the determination of the price of labour including the other terms and conditions of employment becomes the chief source of conflict between the employer and his employees.

Further, it has to be appreciated that the conflict is not personal, but results from the capitalist system itself. In a competitive market situation the constant drive for cost reduction is needed for the mere survival of a business enterprise. The employer attempts to economise on wages also because they constitute an important element in the cost of production. But what is cost to the employer is the main source of income to the workers who, therefore, seek to maximise their wages and industrial conflict is the result.

It is not that the employer is cruel and enjoys the sight of misery, disease, squalour and want among his workers. The point is that he cannot afford to be liberal and altruistic. He is himself a victim of the system.

Moreover, labour power is fundamentally different from any other commodity. Not only that labour power is a function of time and is, therefore, most perishable but also that it cannot be separated from the labourer. The labourer sells his labour power, but retains it in his person. A seller is the least concerned

with what happens to the commodity after he has sold it. But a labourer is very much concerned with the way the employer uses the labour power; with the temperature under which it is used, the speed with which it is worked, and the tension and the pressure that its use creates i.e. the conditions under which work is performed are of utmost importance to the life and happiness of the labourer and do become a source of conflict, no less important than wages.

Thus, conflict of interests is found not only in the spheres of wages and profits alone, rather it bedevils the totality of relationship arising out of the coming together of labour and capital in the capitalist form of economic organisation. The profit maximisation goal of management may demand changes in the types of goods produced, installation of new machineries, adoption of newer methods of production involving loss of hard-earned skills, transfers, retrenchment and compulsory retirement of workers. On the other hand, the workers expect and demand stability in their income, security of employment, protection of skills and improvement in their status.—

Profit maximisation may also require authoritarian administration of the enterprise, closer supervision of workers, maintenance of strict discipline and complete obedience to the rules of the enterprise. On the contrary, workers may demand a share in the management of the enterprise, a voice in the formulation of the standing orders and scope for self-expression and a respect for the dignity of their individuality. Hence, it is not only the sharing of the fruits of the industry that generates conflict: the very fact of how production is to be carried on and how costs are to be shared also becomes a major source of conflict between labour and capital.

### Industrial Disputes

Conflict as one of the features of industrial relations is a general concept. When it acquires a concrete and specific manifestation, it becomes an industrial dispute i.e. industrial conflict is general whereas industrial dispute is specific. Industrial disputes may be said to be disagreement or controversy between management and labour with respect to wages, working conditions, union recognition or other employment matters. Such a dispute may

include controversies between rival unions regarding jurisdiction also. There can be as many industrial disputes as there are points of contact between management and labour or one industrial dispute may cover many issues of conflict. When issues of conflict are submitted to the management for negotiation, they take the form of industrial disputes. Therefore, the specific causes of industrial conflict may be treated as causes of industrial disputes also.

### 3 Specific Causes of Industrial Disputes

In the background of the general foregoing comments it would facilitate understanding if the causes of industrial disputes or industrial conflict were more definitely categorised and specified. A brief illustrative check-list of the specific causes of industrial disputes is given below:

#### (1) *Economic*

- (A) Division of the fruits of the industry
  - (a) Wage structure and demands for higher wages;
  - (b) Methods of job-evaluation;
  - (c) Deductions from wages;
  - (d) Incentives;
  - (e) Fringe benefits.
- (B) Methods of production and physical working conditions
  - (a) Working conditions;
  - (b) Machinery;
  - (c) Layouts;
  - (d) Changes in products.
- (C) Terms of employment
  - Hours of work, shift working, promotion, demotion, lay-off, retrenchment, dismissal, job-security etc.

#### (2) *Institutional*

- (a) Recognition of the union;
- (b) Membership of the union;
- (c) Subjects of collective bargaining;
- (d) Bargaining unit;
- (e) Union security;
- (f) Unfair practices.

(3) *Psychological*

- (a) Clash of personalities;
- (b) Behavioural maladjustments;
- (c) Demands for recognition of workers' personality;
- (d) Authoritarian administration;
- (e) Lack of scope for self-expression and participation;
- (f) Undue emphasis on discipline.

(4) *Denial of legal and contractual rights*

- (a) Non-implementation of labour laws and regulations, standing orders, adjudication-awards.
- (b) Violation of collective agreements, wage boards' recommendations, customary rights, etc.

This check-list of the specific causes of industrial disputes is merely illustrative. The points of contact between the employer and his employees are so numerous that no exhaustive list can be prepared. Besides, the check-list contains the main causes of industrial disputes but does not indicate their relative importance as causative factors. / If industrial disputes were to be classified on the basis of causes and their relative importance it would be found that their relative importance would vary from country to country and in the same country from time to time. In one country, at one time, wages may constitute to be the single main source of industrial disputes, whereas at a different time or in a different country, the relative importance of wages may decline and some other issue may become more important. In which country and at what time, which issue will become predominant will depend upon the importance the workers attach to their problems within the prevailing economic and political climate. It is well-known that in the earlier stages of industrial development wages were the most important cause of industrial conflict. As the wage level rises, hours of work and other working conditions may gain in importance as causative factors. In times of unionisation, issues relating to recognition of unions and union security may figure more often in the industrial disputes. During times of depression and slackening of businesses, retrenchment and lay-off will become prominent. Thus, as industrial conflict and industrial disputes are the results of clashes in the goals and aspirations of the workers and the employers, the variations in the causes of industrial disputes will indicate

the changes in the pattern of workers' goals and aspirations.

A study of the classification given above indicates that some of the sources of conflict are individual and others collective in character. For example, the issue of non-payment of wages or the denial of leave may relate to an individual workman but the demand for a general wage increase or the recognition of the union is a matter which always concerns a group of workmen.

## ✓ Interests and Rights Disputes

Another way of looking at industrial disputes could be to classify them on the American pattern wherein disputes are categorised under two heads:

- (i) disputes concerning interests; and
- (ii) disputes concerning rights.

There can be disputes regarding creation of specific rights and there can also be disputes regarding the implementation of these rights. The former disputes are said to be disputes regarding interests and the latter disputes regarding rights. An illustration would be useful to explain these concepts. A dispute concerning a general wage increase or the acceptance of seniority as the basis of promotion may be said to be a dispute regarding interests. The resolution of this dispute may create certain rights i.e. right to a higher wage or right to promotion on the basis of seniority. Later on, if the employer refuses to make payment according to the terms of agreement or the adjudication award or refuses to make promotion in a specific case on the basis of seniority, disputes regarding implementation of the rights will arise. Therefore, they can be said to be disputes regarding rights.

Under the Indian context, disputes regarding the implementation of labour laws and regulations, standing orders, arbitration awards, collective agreements and settlements, wage boards' recommendations and administrative orders of the government will fall under the second category of disputes concerning rights. These disputes in American parlance are called grievances. The American unions and managements are not prepared to submit to arbitration their disputes regarding interests, but often resort to arbitration as the last stage in settling disputes regarding rights. In the U.S.A., a trade union would be rarely prepared to submit its

demand for a wage increase to arbitration, but once an agreement has been signed, the union may perfectly be willing to submit to arbitration disputes flowing from the implementation or the interpretation of the agreement.

### Results of Industrial Conflict

It requires not a very imaginative mind to realise the consequences of a situation full of conflicts. It is surprising that the existing set-up of industrial relations, whose roots lie in an all-pervasive conflict, functions at all. It is clear that such conflicts have adverse effects on industrial production, efficiency, costs, quality, human satisfaction, discipline, technological and economic progress and finally on the welfare of the society. Even in the absence of open strifes resulting in strikes and lockouts, where production machinery comes to a halt and the costs and losses are apparent, the corrosive effect of industrial conflict is much too widespread and deep to be neglected. A discontented labour force, nursing in its heart mute grievances and resentments, cannot be efficient and will not possess a high degree of industrial morale. Under such conditions absenteeism and labour turnover increase, plant discipline breaks down, both the quality and quantity of production suffer and costs mount up to the detriment of all concerned—workers, employers and consumers. In the end, the accumulation of these individual and collective resentments and dissatisfactions finds expression in violent strikes and lockouts. Then, the realisation comes that something is vitally wrong with the relation between the workmen and the employer and that preventive and curative measures have to be urgently needed. A detailed discussion of the problems of strikes and lockouts is provided in Chapter 11.

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## CHAPTER 11

### THE PROBLEM OF STRIKES

#### Strike—A Method of Settling Industrial Disputes

In spite of the elaborate machineries that employers, employees and the State have evolved everywhere to bring about a peaceful settlement of industrial disputes, strikes and lockouts have not been completely eliminated. Analysts continue to identify the causes of strikes, and attempts at refining the methods and machineries for the peaceful settlement of industrial disputes still persist.

Strikes and lockouts are one of the methods adopted by workers and employers respectively to settle their differences. When the workers fail to secure a redressal of their grievances and fulfilment of their demands by peaceful negotiations with the employer, they try to force the employer to come to a settlement by temporarily withdrawing their services in the form of a strike. They may succeed or fail in their attempt to do so, but for the time being, the issue that gave rise to the dispute is settled either in the favour of the workers or in the favour of the employer. The strike has been and is the main weapon in the armoury of labour to achieve its goals. Likewise, the employers resort to lockouts. According to the view presented here, strikes and lockouts are not to be identified with industrial disputes. They are not disputes in themselves; they are just one way of settling disputes for the time being.

## What is a Strike?

A strike may be defined as a concerted and temporary cessation of work by workers with a view to furthering or protecting their interests and rights in general and securing a fulfilment of their specific demands in particular.<sup>1</sup> From this definition certain basic ingredients of a strike follow. Firstly, a strike involves a combined withdrawal of their services by workers. Concertion or combination behind the refusal to work is one of the basic ingredients of a strike. Secondly, the cessation of work is for a temporary period; work is to be resumed whenever the strikers feel like doing so i.e. a strike does not imply the termination of employer-employee relationship. The strikers think that they continue to be employees, though not working. Finally, the cessation of work in a strike has certain objectives. The strikers have a certain purpose in view when they cease working for a temporary period. The purpose, of course, is furthering and protecting their interests and rights and securing fulfilment of their specific demands at a particular time.

The interests and rights the workers may seek to promote and protect through strikes are multitudinous. They may relate to the terms and conditions of employment either directly of the strikers or of other workmen or to the political and social interests or to showing international solidarity of the working class or to any issue which the workers may consider worth striking for. Historically, strikes have been used for all these purposes and for many more, though the primary purpose behind strikes has been, and still continues to be, to bring pressure upon the employer to commit or desist from committing certain actions relating to terms and conditions of employment.

## Causes of Strikes

It has been stated above that the 'strike' is one of the means adopted by labour to achieve its goals. Therefore, looking for the causes of strikes means searching the causes which lead the workers

1. This is not a legalistic definition of 'strike'. A legalistic definition has per force to be more exact and restrictive.

to choose the method of strike in preference to others, if available. If this be so, then the only cause of a strike is that either no other alternative methods are available, or if available, the workers feel that the use of the alternatives will not be as effective as the strike in the attainment of their goals. Strikes are costly to workers; they involve loss of earnings, cause emotional tensions and strains, deplete union funds and lead to the loss of employment for many workers. If, in spite of these risks, the workers decide to go on a strike, they do so because they feel that they have no other way of achieving their goals and aspirations. In the case of a civil dispute, two individuals may decide to settle their dispute by fighting each other—the ancient method of settling dispute i.e. trial by combat. Today, the State does not permit the use of violence for the settlement of civil disputes between two individuals and has provided an alternative elaborate judicial machinery for the processing of such disputes. But in the case of industrial disputes, strikes are recognised as a legitimate method of settling differences between the employer and his employees. However, in certain countries the State has evolved an elaborate machinery for the settlement of industrial disputes with a code of industrial jurisprudence. Under these conditions, the State has prevented altogether or imposed serious restrictions on industrial warfare for the purpose of settling industrial disputes. Experience everywhere shows that when alternative methods are provided in the form of mediation and conciliation services, adjudication, wage boards and consultative machineries, the incidence of strikes goes down.

From this point of view, the causes of strikes are different from the objectives which are sought to be achieved through them, though most of the students of industrial relations tend to identify the objectives with causes. Securing a higher wage may be the objective of a strike, but not its cause. The cause is the absence of another equally or more effective method acceptable to workers for obtaining the same higher wage. If the demand for a higher wage is treated as the cause of a strike, the refusal by the employer to concede to the demand could equally be listed as the cause. Both the demand for a higher wage and the refusal by the employer to concede the same are causes of differences i.e. causes of industrial disputes and not causes of a strike. If no other method of settling the dispute is available, the workers may seek to settle it by going

on a strike. However, a common practice has developed of treating the purposes of strikes as their causes. Thus, the causes of industrial disputes become the causes of strikes. An attempt has already been made to specify the causes of industrial disputes in the preceding section and these need not be listed here.

In the history of strikes there have been numerous issues which the workers have considered worth striking for. Among such issues, some may be treated as being more important than others because of their more frequent occurrence. Of these, wages and other related issues have been more important. In all countries more strikes result from disputes over wages than from those on any other single cause. In times of business prosperity, rising prices and increasing costs of living, strikes for wage increases gain in frequency whereas resistance to wage-cuts figures more often in strikes in times of depressions. In the U.S.A., wages as causes of strikes have rarely accounted for less than 50 per cent of the strikes; occasionally, the percentage has gone up as high as 70 per cent.<sup>2</sup> In the great depression of 1931, fifty per cent of the strikes were for the purpose of resisting wage-cuts. Similarly, in Great Britain wage-issues have figured in more than 50 per cent of the strikes. Likewise, the Indian experience in the past has been of the same pattern, though currently because of the availability of such machineries as adjudication, wage boards and minimum wage legislation, the wage-issues are no longer as prominent. Table 21 gives an idea of the various issues involved in strikes in India during 1961-1970.

As most of the work stoppages result from strikes and a very few from lockouts, this table can also be taken to provide a classification of strikes by causes. Table 21 shows that between 1961 and 1970, wages and allowances constituted the most important single factor in industrial disputes accounting for between 27.8 and 39.9 per cent of the total number of disputes resulting in work stoppages. If bonus is taken as a deferred wage, the proportion would be still higher.

Other issues which have figured prominently in industrial strikes relate to union recognition, personnel matters, physical working

2. See Harry A. Millis and Royal E. Montgomery, *Labor's Progress and Some Basic Labor Problems*, Vol. III, pp. 700-701.

TABLE 21  
Percentage Distribution of Industrial Disputes Resulting in Work-stoppages in India by  
Causes (1961-1970)

Cause	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970
Wages and allowances	30.4	30.2	27.8	34.9	33.5	35.8	39.9	38.4	36.0	37.1
Bonus	6.9	12.3	10.0	7.9	9.9	13.2	10.9	9.4	10.0	10.6
Personnel and retrenchment	29.3	25.2	25.9	27.4	27.3	25.3	23.6	28.2	26.6	25.6
Leave and hours of work	3.0	0.7	4.6	2.0	2.5	2.4	1.0	1.9	2.2	2.1
Indiscipline and violence	—	—	—	—	—	—	—	3.2	3.8	3.8
Others	30.4	31.6	31.7	27.8	26.8	23.3	24.6	18.9	21.4	20.8

Source: Govt. of India, various issues of *Indian Labour Statistics*.

conditions and other terms and conditions of employment. Further, resorts to strikes for political purposes have been frequent in India and also in the hitherto colonial countries. It may, however, be noted that strikes are due to "a multitude of causes, and it is not always easy in specific instances to ascertain the particular cause or causes involved. Surface manifestations of unrest and dissatisfaction which appear to be responsible for a work stoppage may cover deep-seated and more basic causes which cannot be observed at first sight. Moreover, the relative importance of the causes, when more than one are present, is often very difficult to gauge. For these reasons any classification of strike causes is bound to be of limited value."<sup>3</sup>

### Forms of Strikes

Over the course of time, strikes have been known by various names depending on their purpose or their technique, such as a 'general strike,' a 'sympathetic strike', a 'stay-in or sit-down strike', and a 'slow down strike'. Some of the more common forms of strikes (which are not always clearly differentiated from one another) are described below.

#### 1. *Authorised and unauthorised strikes*

On the basis of the nature of initiation, strikes may be classified as (a) authorised, and (b) unauthorised. An authorised strike, is one which is called only after the union has given its consent. An unauthorised strike, commonly known as a *wild-cat* strike, is one which is called without the approval of the union. Strikes called by a section of workmen on the spur of the moment without any formal preparation, any formal notice to the employer or any consent from the relevant union are known by this name. A 'wild-cat' strike is an emotional outburst caused by any sudden provocative action on the part of the management or supervisors. Unauthorised or 'wild-cat' strikes also represent "a rebellion on the part of the rank-and-file membership against the union leadership or rebellion by part of the membership against the total membership."<sup>4</sup> Strikes of this type were very common in the

3. Clyde E. Dankert, *Contemporary Unionism in the United States*, p. 389.

4. *Ibid.*, p. 392.

U.S.A. during the Second World War period. Of late, 'wild-cat' strikes also became frequent in Great Britain. One of the objectives behind the enactment of the British Industrial Relations Act, 1971 has been to discourage resort to such strikes.

## 2. *General and particular strikes*

On the basis of their scope i.e. workers and areas covered, strikes may be classified as 'general' or 'particular'. A general strike has a wide coverage, but the degree of generality or the nature of coverage varies considerably from strike to strike. For example, there may be a general strike which covers a wide range of industries and all or a large part of the country. However, a strike covering all the industries and an entire country as envisaged by extreme radicals can be envisaged only in imagination. Examples of general strikes having a very wide coverage are the General Strike of 1926 in Great Britain and the French General Strike of 1938.

Some general strikes are confined to a city or an industrial town. *Bundhs* are typical examples of such strikes in India. The objective behind organising *bundhs* has primarily been political in nature. Whatever may be the purpose, *bundhs* often lead to widespread sufferings and inconvenience particularly for the local community. In some cases, workers employed in different industries in a city or area may call industrial strikes simultaneously without having any political objective. Another example of a general strike may be one which, although confined to only one industry, covers many employers, sometimes extending beyond one city or industrial area.

In contrast to general strikes, particular strikes are limited in scope and are usually confined to a single plant or a few plants and to a single trade or occupation in a particular town or city. Ordinarily, such strikes are called by the plant level unions. Majority of strikes come under this group.

## (3) *Types based on techniques*

Strikes can also be differentiated on the basis of the techniques adopted. There is a set of strikes in which the workers continue to attend to their work-places, but still intend to reduce their output. In others, they formally quit their work-places. The most

common of the former category of strike are: (a) slow-down strike, (b) quickie strike, (c) sit-down strike, and (d) work-to-rule strike.

(a) *Slow-down strike*. In a strike of this type, workers do not actually stop working, rather they slow down the pace of their work. Such strikes are a common feature in the Indian sugar industry during the crushing season. Employers vehemently resent this form of strike and call it immoral.

(b) *Quickie strike*. In a quickie, workers remain in their place of work, but they stop work for a brief period i.e. for a few minutes or a few hours.

(c) *Sit-down strike*. In a sit-down strike also, workers remain in their place of work but they do not work. The duration of the stoppage in a sit-down strike is longer than that in a quickie. The difference between a quickie and a sit-down strike is only of duration; all quickies involve sit-down but all sit-downs are not quickies. Further, in a slow-down strike workers pretend to be working, though at a lower pace. In a sit-down strike, they stop working altogether.

(d) *Work-to-rule*. Under a work-to-rule situation, the employees are not formally on strike similar to the slow-down situation. The employees declare that they will perform their tasks strictly in accordance with the rules prescribed. In some industries, the nature of the business and the rules prescribed are such as to lead to a considerably slowing down of the pace of work if the rules are strictly followed. Therefore, in actual practice, many of the rules are very often overlooked without causing any damage to the quality and quantity of work. Under such conditions, if the unions and workers declare that they will work according to the rules, they succeed in slowing down the pace of work and reducing output without going on a formal strike and without any dereliction of duty. The procedure of work followed during work-to-rule movement shows a departure from the customary procedure, but not from the prescribed one, and the ultimate result is the slow-down. A work-to-rule movement thus becomes a very effective instrument of exerting pressure on the management. In some services like insurance, banking, post and telegraph and government offices, employees often resort to work-to-rule method for the fulfilment of their demands. The work-to-rule movement is generally a slow-

down movement.

*Ordinary strike.* The strike situation in which the workers continue to be present in the work-places is not very common. The most common of strikes which is distinct from others noted above is one in which workers formally quit their places of work and prevent others, occasionally by violence but mostly by persuasion and picketing, from replacing them. In this form of strike, picketing, processions and demonstrations are necessary for the success of the strike.

#### 4. Types based on generic purposes

Strikes have also been named after the generic purposes for which they are undertaken. These strikes are: (a) sympathetic strikes, (b) jurisdictional strikes, (c) political strikes, and (d) general strikes.

(a) *Sympathetic strike.* A sympathetic strike, as the term itself indicates, is conducted out of sympathy for the cause of another group of workers, whether on strike or not. Thus, the workers resorting to a sympathetic strike have no immediate grievance against their employer. The strikers hope to strengthen the morale of the workers for whom they are expressing their sympathy by going on a strike. A sympathetic strike is an expression of solidarity with and support to a cause. The workers on a sympathetic strike may also expect their employer to use his good offices for the success of the cause of the fellow-workers for whom sympathy is being expressed.

(b) *Jurisdictional strike.* Jurisdictional strikes are conducted with a view to forcing an employer to recognise or bargain with a particular trade union instead of another. Two unions may claim to represent the same set of workers and may clamour for recognition for this purpose. One of the contestants may go on strike to pressurise the employer to accept its representational claim. As a matter of fact, two unions are quarelling for their respective jurisdictions and the strike is the result of this difference. Hence, such strikes are known as jurisdictional strikes. Jurisdictional strikes were very common in the U.S.A. and were subsequently brought under the restrictive provisions of the Taft-Hartley Act, 1947. In India also, strikes pertaining to recognition of unions are very common but the law does not have any special

provisions to deal with such strikes. In a situation of acute trade union rivalry, as obtains in India, jurisdictional disputes tend to become very frequent.

(c) *Political strike*. Strikes of this sort are intended to put pressure on the government to do something or desist from doing something. Such strikes are also intended to express workers' support to a particular political cause. Political strikes have been very common in India. During the days of the imperial rule, workers would go on strike very often to protest against the imprisonment of the national leaders and to voice their support to the cause of independence. In the post-independence period, the reorganisation of States, the claims of linguistic groups and languages, location of a particular industrial unit in a particular region, the general economic situation, and many foreign issues have provided the occasions for political strikes. *Bundhs* discussed earlier also come under this category. Such strikes are not caused by any industrial dispute.

(d) *General strikes*. General strikes are similar to political strikes in nature and purpose. A general strike which involves the entire working-class of a country can rarely be occasioned by industrial disputes. A general strike may be a part of a revolutionary movement. The syndicalists looked upon the general strike as a method to abolish capitalism and usher in a new economic order.

### *Gherao*

Here, it is relevant to refer to the phenomenon of *gherao* which was very frequently resorted to by the workers for a few years after 1967, though its occurrence is rare now. *Gheraos*, not necessarily confined during the periods of strikes, are one of the methods designed to exert pressure for the fulfilment of demands. The practice involves confinement by workers of authorities (often managerial personnel) in their offices lasting for hours or even days, and they are prevented from going out pending the fulfilment of the demands. In some cases, persons under *gherao* are forced to remain without food and water for hours and are at times not allowed to go out even for natural calls. The workers squat around the office-room of the officers, often in batches, encircle the premises and close all exits.

The movement first began in West Bengal but soon Kerala followed suit. *Gheraos* were at their highest peak during the regime of the United Front Governments<sup>5</sup> in these States. Gradually spread to other parts of the country. The movement did not remain confined to industrial establishments, and it also entered government offices, educational institutions and commercial establishments.

At one stage, the movement in West Bengal became so widespread that many industries began to close; a number of workers were thrown out of employment; expansion of industries stopped; and head-offices of many companies began to shift from Calcutta. At that time the police was also directed by the then Minister of Labour not to take action against employees participating in *gheraos*. This led to a further deterioration in the situation. The Industrial Disputes Act, 1947 could not provide any solution as the question of *gheraos* fell outside the scope of the powers of the authorities constituted under the Act.

The question ultimately came up for decision before the Calcutta High Court. The Court which gave its judgement in September 1967, held that *gherao* which involved wrongful restraint on a person belonging to a management was a cognizable offence punishable under sections 339 and 340 of the Indian Penal Code and offenders were liable to be arrested without warrant. The Court also castigated the West Bengal Labour Minister for giving direction to the police and declared void the "guideline-circulars" issued by the State Government to deal with *gheraos*.

The problems resulting from *gherao* also received the attention of the National Commission on Labour which held that "*gheraos*, apart from their adverse effects on industry and economy of the country, strike at the very root of trade unionism." The Commission deprecated resort to *gheraos* "which invariably tend to inflict physical duress on the person affected and endanger not only industrial harmony but also create problems of law and order." Further, according to the Commission, *gheraos* "cannot be treated as a form of industrial protest since they involve

5. Governments formed by a coalition of left-oriented political parties under the leadership of Communist Party of India (Marxist).

physical coercion rather than economic pressure.” The Commission, however, did not suggest any concrete measures for discouraging the practice and contented itself by saying. “It is the duty of union leaders...to condemn this form of labour protest as harmful to the interest of the working class.”<sup>6</sup>

It may here be noted that *gheraos* are not new to the labour movement. During the early years of the growth of workers' combinations in England, workers often resorted to obstructing supervisors and managers in the discharge of their duties, confined them in their offices, particularly in isolated areas, physically assaulted them, and deliberately broke the machines in protest against the miserable working and living conditions. This was one of the reasons why the Combination Acts of 1824 and 1825 specified certain offences for which the members of the workers' combinations could be imprisoned. These included: “violence, threats, or intimidation, molestation or obstruction for the purpose of forcing a person to leave his work, forcing or inducing a person to belong to a trade union or observe a trade union's rules, and forcing an employer to alter his manner of conducting his business, or to limit the number of employees.”<sup>7</sup> Most of the practices associated with *gheraos* were covered under the terms ‘intimidation’, ‘obstruction’, ‘molestation’ and ‘picketing’ which, under certain circumstances, constituted offences under special statutes. In the early trade union movement of the U.S.A. also, workers often resorted to violence and physical duress of the foremen and managerial personnel. Thus, *gheraos* are a essentially primitive method used by the early trade unions, particularly in England.

The practice of *gherao* has now mostly fallen into disuse. There is neither any political support to this movement nor can it secure any moral sanction. Industrial warfare in the forms of strikes and lockouts and exerting economic pressures of all kinds is accepted as legitimate in the settlement of industrial disputes, but the use of violence against a person is condemned on all sides. One rarely comes across an incident of *gheraos* these days.

6. Govt. of India, *Report of the National Commission on Labour*, 1969, p. 328.

7. J. Connison, *Labour Organisation*, p. 31.

## Factors Conditioning the Outcome of Strikes

Of the many strikes that are launched everyday, a few succeed in achieving their objectives; some are partially successful; and some miserably fail and strikers return to work unconditionally. An idea of the results of strikes launched in India during 1961-1970 can be had from Table 22.

TABLE 22

Percentage Distribution of Industrial Disputes Resulting in Work-stoppages in India by Results (1961-1970)

<i>Year</i>	<i>Successful</i>	<i>Partially successful</i>	<i>Unsuccessful</i>	<i>Indefinite</i>	<i>Total No. of cases*</i>
1961	28.8	19.5	29.5	22.2	1139
1962	30.2	18.3	30.7	20.8	1395
1963	23.4	17.9	41.0	17.7	1398
1964	27.7	14.8	37.2	20.3	2039
1965	30.7	13.5	35.9	19.9	1760
1966	31.6	16.5	31.4	20.5	2356
1967	33.3	15.8	34.7	16.2	2566
1968	30.0	18.4	36.3	15.3	2538
1969	35.2	17.1	31.2	16.5	2499
1970	34.4	17.0	33.4	15.2	2759

*Source :* Govt. of India, *Various issues of Indian Labour Statistics.*

\* Relates to those causes only for which the relevant information was available.

Note (1) Results are based on the extent to which workers' demands are met. Thus 'unsuccessful' means that workers' demands were not accepted; 'indefinite' means that no final decision was reached at the time of resumption of work.

Table 22 shows that the number of successful strikes including the partially successful also has never reached even 50 per cent of the total number of strikes. The unsuccessful strikes, along with those with indefinite results, have always constituted more than 50 per cent of the total strikes. Thus, it is evident that the weapon of strike, commonly regarded as the last weapon in the armoury of labour, has not been very effective in producing results for the workers. However, it is not easy to

evaluate strikes in terms of their outcome with respect to the demands for which they are undertaken. A very common practice in India is that strikes are called off without any agreement being signed, containing concessions for the workers. But immediately after a strike is over, demands are conceded and concessions are made through pure administrative orders. What looked like a failure ultimately turns out to be a success. Similarly, many of the strikes are withdrawn as a face-saving device just on mere verbal assurances which never materialise. Therefore, in most cases, a classification of strikes between successful and unsuccessful ones is highly misleading in the Indian context.

Further, there is a view-point that the outcome of a strike cannot always be measured in terms of immediate gains and losses in the conditions of employment. This view-point emphasises that the strike is a weapon that strengthens the labour movement, sharpens class consciousness and that trade unions grow through struggles. Therefore, a strike never fails.

Strikes are intended to coerce the employer to accept the workers' demands. At the same time, they inflict losses on the workers also. A strike is really a trial of strength between the workers and the employer and the outcome of a strike depends on the relative strength of the union and the employer. But this relative strength is itself determined by a number of other factors which can be discussed under three heads : (1) factors operating on the side of the union, (2) factors operating on the side of the employer, and (3) general factors.

### *(1) On the side of the union*

The main factors operating on the side of the union are: (a) extent of unionisation, (b) composition of union membership, (c) union finances, (d) substitutability of the services of the strikers, (e) union leadership, (f) the morale of the workers, (g) support from other unions, and (h) the history of past strikes.

As the strike is a double-edged weapon cutting both ways, the factors affecting the strength of the union determine the outcome of the strike by conditioning the staying power of the strikers. Under such conditions, a strike is a game of patience.

The longer the strike lasts, the greater are the sufferings of the strikers. Therefore, during a period of strike, the union has to arrange for strike-benefits and has to do everything possible to maintain the morale of the strikers. Moreover, sympathetic strikes by other unions and the boycott of the employer's products may weaken the employer's resistance. The character, wisdom and experience of the union leaders play a decisive role in determining the outcome of a strike. It is the leaders' responsibility to read the situation, to gauge the strength of the employer's resistance, to seek and mobilise support from other sections of the population and political parties and to mould government's thinking and reaction. In short, it is for them to evolve an effective strike strategy, adopt appropriate tactics and organise a competent publicity programme during the strike period.

If the services of the strikers cannot be easily substituted by other workers or by machines, the chances for the success of the strike are brighter. Support and sympathy of other unions both within the nation and outside in the form of donations in cash or kind lengthen the staying power of the strikers. On the other hand, trade union rivalry is a weakening factor. Many strikes in India have become unsuccessful because of the leg-pulling and strike-breaking efforts of the rival unions. The history of past strikes may also act as a damper or a booster to the morale of the strikers.

## *(2) On the side of the employer*

On the side of the employer, the important factors are: (a) the economic position of the enterprise, (b) the philosophy of the employer, (c) the availability of alternative ways to produce the goods and services, and (d) the support available from other employers.

The employer's staying power is an important factor conditioning the outcome of a strike. If he can outwait the strikers, it is quite likely that the strike will fail. If the economic position of the enterprise is such that it can continue in existence for a considerable length of time in spite of the stoppage of production, the economic hardships of the strikers will correspondingly increase and their staying power reduced. In the same way, if he can continue supplying the orders of the customers by transferring business to other branches or to friendly producers or by employing

substitutes, he can face the strike situation for a longer time. In many instances employers have shown the same degree of solidarity, if not greater, as the workers in facing a strike situation. No less important is the employer's philosophy. If an employer is out to crush the strikers even at the cost of going out of business, if economic calculus does not enter into his mind and if he is guided by considerations of prestige rather than by economic gains and losses, the strike may end in failure.

It is with a view to minimising the resistance of the employers that the unions have to adopt a particular strategy and tactics in going on a strike supplemented by picketing and boycott. The unions are on the look-out for the time when the employer is most vulnerable and generally they so time their strike as to inflict the heaviest losses on him. When the business is in a prosperous condition and a producer has urgent and profitable orders to supply, his losses will be heavy if work is stopped. Therefore, the timing of the strike is an important factor in determining its outcome.

### (3) *General*

Amongst the general factors, the chief ones are : (a) the prevailing economic climate, (b) policy of the government, (c) public opinion and (d) composition of the labour force.

The unions and the employers fight out their differences through strikes in a particular economic and political environment which has its influence on the outcome of a strike. In a generally depressed economic environment, when unemployment is widespread, the conditions for the success of a strike are not propitious. The easy availability of unemployed surplus manpower acts as a drag on the strike. The policy of the government contributes materially to the outcome of a strike. A pro-employer government may easily intervene on his side in the name of law and order; strikers may be arrested or restrictions may be imposed on processions and demonstrations, thereby demoralising the rank-and-file of the strikers. On the other hand, if a government is sympathetic to labour, the effect will be favourable to the strikers.

Similarly, public opinion, both by influencing the policy and attitude of the government and by extending or withdrawing material and moral support to the strikers, plays an important role in

determining the success or the failure of a strike. The importance of public opinion as a determinant of the results of a strike is growing everyday. The extent of the role of public opinion can be gauged by the resources devoted by both the sides in a strike situation to educating, influencing and mobilising the public opinion in their favour. Leaflets are distributed, paid advertisements are inserted in newspapers, meetings, processions with placards are organised, and whenever available, radio and television are utilised to project the respective stands. Each side seeks to present itself as the most reasonable and just, and the other as the villain. Each side tries to emphasise that it is not acting against any public interest.

Here, it ought to be realised that strikes do cause some inconvenience to the public as the consumer of goods and services. Public opinion may be presumed to be always against the strikers. Therefore, trade unions have to cultivate it more carefully and assiduously. But most of the unions in India, because of their small size and poor financial resources, are not in a position to undertake any extensive campaign to educate public opinion. However, public opinion, most of the time, is divided along class lines. In a society where the labour force consists predominantly of wage earners, the public sentiment will generally be in favour of the strikers, but in a country like India, where the size of the self-employed in the labour force is predominant, public opinion is generally against strikes. The self-employed persons do not have the need to resort to strikes and, therefore, can appreciate neither the usefulness of strikes to the wage-earners nor the pressures under which they have to resort to strikes. Under such conditions, it becomes all the more difficult for a trade union to secure public support.

This, in brief, is the picture of the factors influencing the outcome of a strike.

### **Effects of Strikes**

Any attempt at a precise assessment of the effects of a strike is extremely hazardous. In an economy where everybody performs some specialised service and is in many ways dependent on others, the ramifications of a strike are too many to be evaluated. However, in the main, the effects of a strike primarily depend on:

(a) the number of workers involved in the strike, (b) its duration, and (c) the nature of the struck product or service. The larger the number of workers involved, the longer the duration of a strike; and the more essential the commodity and the service, the more widespread are the effects of a strike. In general the possible effects of a strike may, for the sake of convenience, be discussed under the following three heads:

(1) Effects on the parties to the strike:

- (a) On the employer;
- (b) On the workers.

(2) Effects on others:

- (a) Consumers of the struck products;
- (b) Suppliers to the struck firm;
- (c) Suppliers of goods and services to the strikers.

(3) Effects on the society as a whole:

- (a) On the State;
- (b) On the economy.

*(1) Effects on the Parties*

(a) *On the employer.* The economic losses of the employer caused by a strike are incapable of precise calculation. The loss of profits is only one item in the total losses that an employer may suffer; the employer's business may be crippled because of the loss of market connections beyond the period of the strike; goodwill may be lost; and idle machines may get spoilt. Additional expenditure may have to be incurred on protecting the plant and on strike-breaking activities. Publicity and propaganda are yet other items adding to his costs. Besides, the loss of mental peace, respect and status in the community cannot be calculated in terms of money. Thus, strikes involve both economic and non-economic costs for the employer and, if at the end of the strike, he has to concede the demands of the strikers, additional burdens are imposed. However, certain other elements which mitigate the losses should also form a part of the economic calculation of the cost of a strike.

The stoppage of production prevents the depreciation of machines. The sales made at a higher price as a result of the scarcity created by the strike may enable the employer to recoup a part of his losses. The strike may present an opportunity to the employer to dispose of accumulated stocks. The loss of production may

partly or wholly be made up by increased production in the post-strike period. The loss of production might have been anticipated and made good by stepping up production during the days immediately preceding the strike. A part of the production may be diverted to friendly plants or own branches. The time of the strike may coincide with a slackened business which needs curtailment of production in any case. Strikes engineered by the employers under such conditions are not unknown. In addition, the strike may leave the union weakened and divided to the satisfaction of the employer. The strike might fail and the employer escapes the burden of conceding the workers' demands.

The employer does calculate and compare the costs of a strike to him and those of averting the strike by agreeing to the terms of the union. If he feels that the costs of agreeing to the terms of the union are less than the costs of the strike, he will avert the strike. On the other hand, if the anticipated costs of the strike are less than the costs of the agreement on the union's terms, he will face the strike. It is a part of his business to calculate the comparative costs and act accordingly. The anticipations may be wrong; the strike may not fail as anticipated; and he may ultimately have to bear the costs of the strike as well as the costs of agreeing to the union's terms. It is a game that he is playing with a union with all the risks of uncertainty.

✓ (b) *On the workers.* < Of the adverse effects of a strike on the workers, the important ones are: loss of wages; contracting of debts; personal hardships; loss of employment and many fringe-benefits. > However, it is difficult to assess, though apparently simple, the wage-losses caused on account of a strike. Any calculation of wage-losses from the pay-roll gives only a partial picture. A full account of such losses cannot be had unless answers to many questions are available. How many of the strikers obtain other work during the strike period? How far do the strikers make up their losses by working more nearly full-time or over-time after work is resumed? How many remain unemployed in case the strike fails? What wage-losses are suffered by the non-strikers? What strike benefits are available to the strikers out of the union coffers or donations from outside? These are important questions the answers to which materially affect any estimation of wage-losses suffered during the

period of a strike.

Under the Indian conditions, where a large section of industrial workers maintains connection with the village and agricultural land, the strike may present an opportunity to visit the village home to do agricultural operations and to meet a few social obligations. It is this connection of the workers with their village homes that enables many trade unions in the country to face successfully a prolonged strike situation. The termination of a strike is followed in many cases by notices giving enough time to workers to return to work.

The other adverse effects like contracting of debts or buying goods and services on credit at higher prices, disruptions in the family life, personal hardships and mental agonies, tortures and tension are still more difficult to estimate. Going on strike is not like sleeping on a bed of roses. A life of suspense, hopes and dark forebiddings with tensions increasing as days and weeks pass by is not easy to sustain.

The possible favourable effects of a strike for the workers is dependent on the terms of the settlement and the philosophy with which a strike is undertaken. If the strike ends successfully in achieving the goals for which it was undertaken, all the losses and hardships are more than compensated. In many cases, strikes seem to be completely irrational when costs are compared to the gains to the workers. Occasionally, it may take many years to make up by the meagre wage increases secured the wage losses suffered or, perhaps, they may never be compensated. According to the economist's yardsticks, many strikes should not have been undertaken and are a mere reflection of the union's inability to assess the costs of these strikes. The union calculates both the economic losses and the gains from the strikes. It compares the costs of going on a strike with those of desisting from it, and if the comparison is favourable, the strike is undertaken.

The costs of a strike are incalculable. The anticipated costs of a strike may ultimately turn out to be a complete underestimation. The union may fail to correctly anticipate the strength of the employer's resistance, popular reaction and government's attitude. It may also over-estimate the strength of its own organisation, the morale of its members and the support it expects from its friends and allies. Wrong calculations may lead to wrong steps and the

strike may fail, disrupting the union. Economic calculations, may make many strikes look like a losing proposition.

However, strikes are not always undertaken for the fulfilment of economic demands only. There may be non-economic issues agitating the workers and their unions much more passionately than immediate economic gains; a principle may be involved. Union recognition, promotion by seniority, disciplinary and grievance procedures, management's right to hire and fire, union's insistence on control over jobs and recruitment are matters which cannot be easily converted into monetary terms. To many trade unionists, the gains of a strike cannot be calculated in terms of wage-increases or other concessions secured; to many of them a strike never fails; to others, it may serve to maintain the fighting spirit of the workers, keep powders dry and prevent the weapon from getting rusted and blunted; to others, still, it may be the preliminary step toward the future revolution. These view-points are not a mere rationalisation of the failures of many strikes, rather they are passionately held and nursed with conviction by many trade unionists and workers. That is why, any interference with the right to strike is strongly resented.

## (2) *Effects on Others*

✓ (a) *Consumers of the struck products.* A strike injures not simply the parties to a strike but others as well, who may be subjected to substantial inconveniences. In this group, of people consumers of the struck product come first. The more essential the commodity and the more difficult it is to have its substitutes, the greater are the inconveniences to the consumers. When a strike takes place in industries providing basic necessities of life and public utility services, like electricity, gas, transport and communication, sanitary services etc., the consumers are subjected to untold hardships. If the struck commodity happens to be used in other productive operations, then other producers, their workmen, and consumers also suffer. For example, a strike in coal mining industry affects not only the house hold consumer but other industries also which consume it as a source of power. If plentiful stocks of the struck commodity are available, consumers' sufferings may be mitigated to that extent.

✓(b) *Suppliers to the struck firm.* Similarly, the suppliers to the struck firm also are subjected to material losses when they have to curtail their operations because the struck firm has reduced its demand for their goods and services such as suppliers of primary material equipment and transportation. <A strike in a sugar mill adversely affects the suppliers of sugar cane, the people engaged in transportation of sugar and sugar cane and other suppliers to the mill. These people suffer for no fault of their own.>

✓(c) *Suppliers of goods and services to the strikers.* <When the strikers suffer wage-losses and curtail their consumption, local merchants, vendors, bus and taxi drivers, rickshaw pullers, barbers, washermen and laundry-owners and a host of others, who live by supplying goods and services to the workers, are forced to reduce their activities.> The surrounding areas which normally buzz with economic activities present a deserted look.

### (3) *Effects on the society as a whole*

<The effects which the society as a whole has to bear include those as outlined above. In addition, strikes create law and order problems also, necessitating increased vigilance on the part of the State causing additional expenditure out of public exchequer.> The attention of the public servants is diverted from other issues to the settlement of the strike. The strife and bitterness left by the strike even after it has been settled continue to linger endangering happy social relations. But apart from these, the consequences of long-drawn strikes in the basic industries of the economy may bring all economic activities to a stand-still. In a modern economy of today, where inter-sectoral dependence is a fundamental feature, the losses caused by such strikes are incalculable. As a matter of fact, a strike in a basic industry is like a big stone thrown into a pond causing ever-widening waves till the entire pond is engulfed.

In any assessment of the impact of a strike on the society as a whole, a reference ought to be made to the changing pattern of trade union movement, collective bargaining and strikes. Originally, strikes were resorted to against individual employers without completely shutting down an entire industry. For example, a

strike in any particular coal mine did not, and even today, does not materially affect the supply of coal to its consumers. The pressure remained primarily directed against the particular colliery owner. But now, with the development of industry-wide trade unions and collective bargaining, industry-wide strikes have become very common. The result is that an industry-wide strike completely deprives the consumers of the product of that industry. If the industry happens to be a basic one, the impact on the economy and the consumers is very serious. Like a war, a strike in an economy of today becomes a total strike. As in the modern wars the casualties and sufferings do not remain confined to soldiers fighting on the front, so in the case of the strikes of today, the adverse effects do not remain confined to the employees and the employer of the struck plant. Further, though initially starting locally, a war has every possibility of engulfing the entire humanity, so a local strike may and does occasionally assume national proportions.

It is this realisation of the changing pattern of strikes and their ever increasing detrimental effects on the community that has led to attempts being made everywhere to control and regulate them. Generally speaking, the control measures have been attempted on three dimensions: (a) time, (b) industry, and (c) dispute. Strikes, which are tolerated during normal times, are either completely banned or severely restricted during times of emergencies, such as wars. In the same way, the right to strike, though permitted in other industries, is severely restricted in public utility and essential services in many countries as is evident from the provisions of the Industrial Disputes Act, 1947 and the Essential Services Maintenance Act, 1968 in India. On the other hand, in many places only individual strikes, depending upon the scope of damages done by them, are sought to be controlled, as in the case of the U.S.A., where under the Labour Management Relations Act, 1947, the President has the power to declare a dispute an emergency dispute and to take other steps for its settlement. In Great Britain also, the government has the power to request the NIRC to order for a deferment of a strike either in progress or apprehended if such a strike, in the opinion of the government, is likely to endanger national security, health and supply of essential services.

## An Evaluation of the Right to Strike

Today, it has become an urgent and complex task to reconcile the right of the workers to go on a strike with the right of the community to continue to enjoy uninterrupted the basic necessities of life. The foregoing discussions have made it clear that the right to strike, like all other individual rights, is not absolute. A study of the history of labour movement indicates that the industrial working class gained this right after a long and bitter struggle everywhere. The right to strike is an integral part of individual freedom and liberty under which man has the right to decide to work or not to work for certain given terms of employment i.e. he cannot be legally coerced or forced to work. By quitting his work and breaking his contract of employment, an individual may commit a civil but not a criminal offence. In Great Britain, during the last quarter of the 18th century and the first quarter of the 19th century, when trade unions came into existence and the individual workers in concert and combination with others started exercising this right, the workers were said to be on strike and the law held it to be a criminal offence. What was lawful for an individual became unlawful for the group. It was said that concerted withdrawal of labour i.e. strike was in restraint of trade and, therefore, a criminal conspiracy. In those days of nascent capitalism and rugged individualism the rights of property prevailed over individual human rights.

Gradually, however, as the working class gained in strength and maturity and trade unionism became widespread, the restrictions on the right to strike were removed. Through a series of criminal law amendments and other statutes in Great Britain, it came to be recognised that what is lawful for an individual is also lawful for a group i.e. the concerted withdrawal of labour, if done in contemplation or furtherance of a trade dispute. In other industrial countries also, the working class forced the State to remove the taint of criminal conspiracy and restraint of trade from the right to strike. Since then, the working class has been preserving this right as a cherished treasure and using it as and when the situation demands.

This brief recital of the history of the right to strike shows how a strike is a weapon of the industrial working class. Whether the

exercise of this right for the protection and promotion of the interests of the working-class as a whole or a particular section conflicts with the interests of the society depends upon the extent to which the two interests coincide and are identical. While discussing the effects of strikes, it has been shown how strikes, though helping particular sections of workers, cause damage and loss to the other sections of the community and that is why people, who suffer on account of a strike, decry the use of this weapon and insist on restricting its use.

However, it has to be remembered that in a society, where everybody is the seller of either a commodity or of a service, where he is free to insist on the highest possible price for what he supplies and where he is free to withhold the supply if he does not find the price satisfactory, the workers, when they go on a strike, also exercise the same right of withholding their supply as others do. If suppliers of other services and other commodities, however great their importance may be to the health and life of the community, are left free to behave as they like, why should the workers be deprived of the right to withhold the supply of labour, when by doing so, they can protect their interests? Therefore, any judgement about the usefulness or otherwise of the right to strike and the restrictions to be placed on the same can be made only in the context of the basic political and economic philosophy of a particular society. If the society decides that the entire range of economic activities of an individual and his groups are to be so controlled and regulated as to serve the general interests of the society, the right to strike can also be legitimately controlled and regulated. On the other hand, if the pursuit of individual self-interest continues to be a basic guiding philosophy behind the organisation of economic activities in a particular society, restrictions on the right to strike would neither be legitimate nor tolerated by the working class.

There are many industrial psychologists and sociologists who view a strike as a safety valve, which lets out the excess steam and protects the main mechanism from bursting out. They also find in the strike some elements which make for social and economic health under certain conditions. They feel that the concrete industrial situations are full of conflict and tension. If such tensions are allowed to accumulate, someday, they may result in a violent

bursting out. The strike serves a useful social purpose by letting off the steam occasionally. To many, this way of serving the social purpose is extremely costly and is a luxury which few countries can afford.

In conclusion, it may be said that as more and more segments of the economic life of a society come under the control of the State and it assumes a direct responsibility for the economic growth and welfare of its people, strikes are likely to become an outdated method of settling an industrial dispute.

## CHAPTER 12

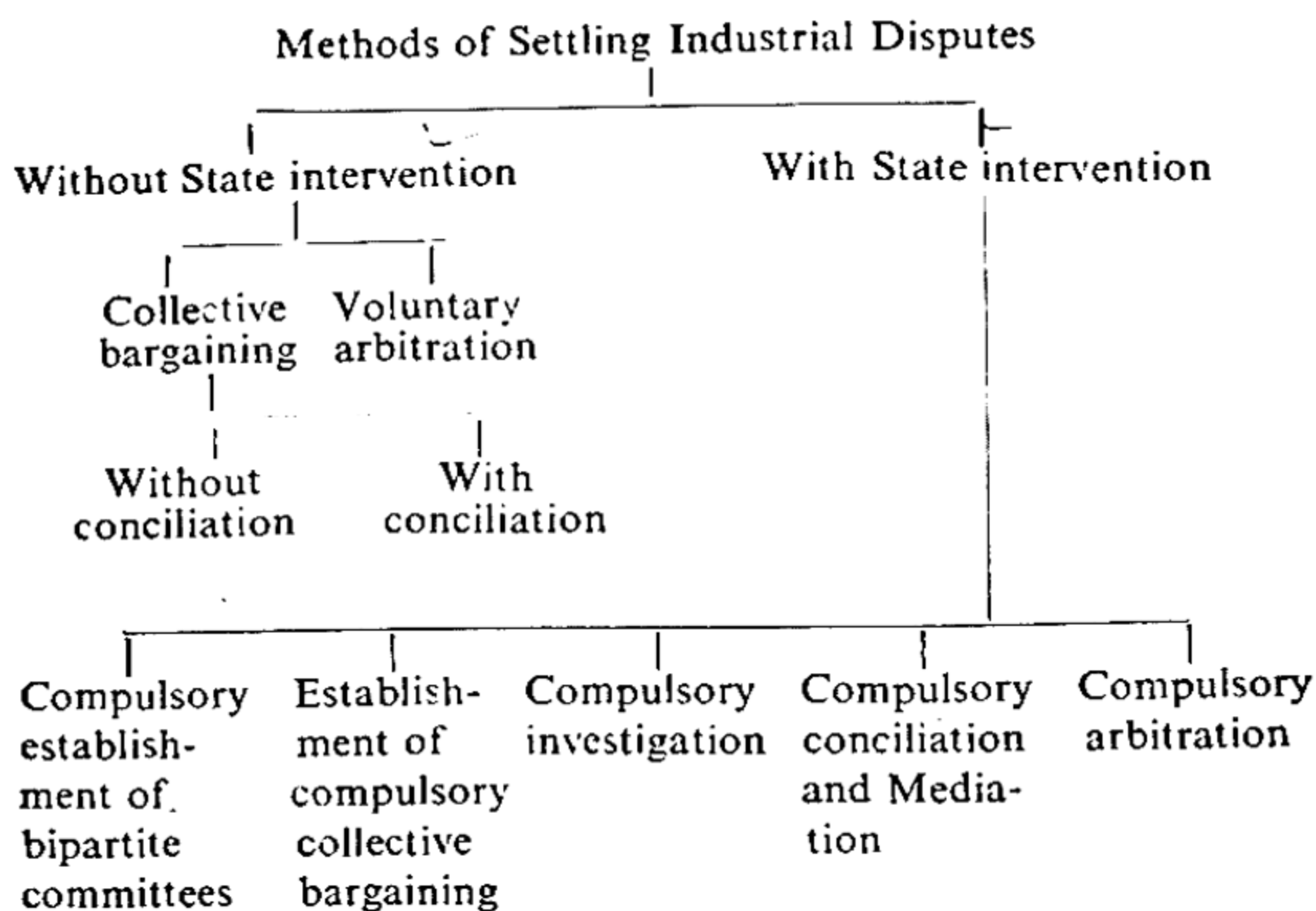
### METHODS OF SETTLING INDUSTRIAL DISPUTES

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When certain demands are made by the workers and the employers resist them, industrial disputes arise. Different methods have evolved over the course of time for settling them and different countries have used them in varying degrees. Therefore, everywhere studies are made of the different methods of settling industrial disputes and finding out the more effective ones in keeping with the basic economic and political institutions of the country.

The methods of settling industrial disputes are not very much different from the methods of settling any other disputes. In how many ways can any dispute anywhere be settled? Basically, the parties to a dispute can settle it by mutual discussions and negotiations (bargaining). If at any time in the discussions a hitch occurs, the parties can decide to enlist the support of a third person to help them in their negotiations (bargaining with conciliation). If mutual negotiations still fail, the parties can either resort to coercive methods, if the law so permits, or can decide to refer the matter to a third party in whom both have confidence for arbitration. Strikes and lockouts represent coercive methods in the industrial field and wars in the international. Resort to arbitration is a common occurrence in everyday life. As the settlement of industrial disputes has serious implications for public welfare, the State intervenes and does not leave the parties always free to settle their disputes in any manner they like. The State has adopted a number of agencies for settling industrial disputes. What has been said here is represented in Chart 2.

Chart 2



### Settlement of Industrial Disputes without State Intervention

There are two ways in which the basic parties to an industrial dispute i.e. the employer and the employees can settle their disputes. These are: (1) collective bargaining, and (2) voluntary arbitration.

#### (1) *Collective Bargaining*

The emergence and stabilisation of the trade union movement has led to the adoption of collective bargaining as a method of settling differences and disputes between the employer and his employees Collective bargaining implies the following main steps:

- (i) Presentation in a collective manner to the employer their demands and grievances by the employees;
- (ii) Discussions and negotiations on the basis of mutual give and take for settling the grievances and fulfilling the demands;

- (iii) Signing of a formal agreement or an informal understanding when negotiations result in mutual satisfaction; and
- (iv) In the event of the failure of negotiations, a likely resort to strike or lockout to force the recalcitrant party to come to terms.

The four steps mentioned here indicate the step by step conclusion of the process of collective bargaining conducted by the parties without any outside assistance. Sometimes, when collective negotiations reach a deadlock, the parties themselves may call in third persons to help them settle their disputes. Here, the role of the outsider who is a commonly agreed person is to break the deadlock, to assuage feelings, to interpret the view-point of one to the other, and thereby to help the parties arrive at an agreement. But the solution, if any, comes out of the parties themselves; the presence of the outsider does not supersede the process of collective bargaining or the freedom of the parties to agree or to disagree. However, bargaining with the help of the third party is called conciliation or mediation. If the negotiations result in a mutually satisfactory position, an agreement may be formally signed or just an informal understanding may be arrived at.

The last step in the process of collective bargaining is a likely resort to coercive measures i.e. strikes or lockouts. Strikes and lockouts are an integral part of the process of collective bargaining and may be viewed as a method of settling industrial disputes as war is a method for settling disputes between two or more nations. In the present context of national sovereignty, war is still recognised as a legitimate instrument of settling international disputes, however disastrous its consequences might be for the humanity as a whole. So are strikes and lockouts recognised in many countries as legitimate weapons in the armoury of labour and management, however detrimental their consequences may be to the welfare of the community. Apart from the role of reasonableness or otherwise of the demands and grievances in determining the outcome of collective bargaining, the threat of strikes and lockouts exercises a potent degree of pressure on the parties concerned to settle their disputes and to come to an agreement. If the threat of a strike were not there, mutual negotiations would rarely succeed and, therefore, if collective bargaining is to be developed as a method of settling industrial disputes, the right to strike has to

exist unimpaired. The solutions arrived at in the process of collective bargaining are ultimately evolved by the parties themselves and are of lasting value. Where collective bargaining has been firmly established, as in the U.S.A. or Great Britain, Sweden, etc., the trade unions and the employers do come to an agreement without very frequent resorts to the trial of economic strength, but in some cases, it is the resort to this trial that ultimately resolves a dispute.

## (2) *Voluntary Arbitration*

The second way in which the parties can settle disputes without any State intervention is voluntary arbitration. The parties, feeling that mutual negotiations will not succeed and realising the futility and wastefulness of strikes and lockouts, may decide to submit the dispute to a neutral person or a group of persons for arbitration. The neutral person hears the parties and gives his award which may or may not be binding on them. At the time of submitting a dispute to arbitration, the parties may agree in advance to abide by the award of the arbitrator and thus industrial peace is maintained and the dispute is resolved. Sometimes, however, the parties may agree to submit the dispute to an arbitrator but at the same time reserve their right to accept or reject the award when it comes. Under such a condition, voluntary arbitration loses its binding force. However, even this limited form of voluntary arbitration is not without its utility.

The Gandhian technique of resolving industrial disputes accords a high place to voluntary arbitration. The constitution of the Textile Labour Association, Ahmedabad provides for voluntary arbitration. At Dalmianagar, the Rohtas Workers' Union and the management of the Rohtas Industries Ltd. have on a number of occasions submitted their disputes to voluntary arbitration. Many industrial disputes are settled today through voluntary arbitration.

The Industrial Disputes Act, 1938 and the Industrial Relations Act, 1946 of Bombay recognised voluntary arbitration as a method along with others for the settlement of industrial disputes. The Five Year Plans have constantly emphasised its role. An amendment to the Industrial Disputes Act, 1947 provides for joint re-

ference of disputes to arbitration.<sup>1</sup> The Code of Discipline also reiterated the faith of the parties in voluntary arbitration in the event of the failure of mutual negotiations. The need for according a wider acceptance to voluntary arbitration was further recognised in the 1962 session of the Indian Labour Conference which held, "Whenever conciliation fails arbitration will be the next normal step, except in cases where the employer feels that for some reasons he would prefer adjudication...."<sup>2</sup> The Conference, however, said, "...the reasons for refusal to agree to arbitration must be fully explained by the party concerned in each case and the matter brought up for consideration by the Implementation Machinery concerned."<sup>3</sup>

Again, the Industrial Truce Resolution, 1962 emphasised voluntary arbitration and specified certain items which could be conveniently brought under its purview. These included: complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen. Later, a tripartite National Arbitration Board was set up with a view to reviewing the position, examining the factors inhibiting its wider acceptance and suggesting measures to make it more popular.

In spite of the support and blessings of Mahatma Gandhi and efforts made by the government, voluntary arbitration has not made much headway in the country. Some of the factors which have hampered the adoption of voluntary arbitration as a method of settling industrial disputes in India were highlighted in the evidence before the National Commission on Labour. These included: "(i) easy availability of adjudication in case of failure of negotiations; (ii) dearth of suitable arbitrators who command the confidence of both parties; (iii) absence of recognised unions which could bind the workers to common agreements; (iv) legal obstacles; (v) the fact that in law no appeal was competent against an arbitrator's award; (vi) absence of a simplified procedure to be followed in voluntary arbitration; and (vii) cost to the parties, particularly workers."<sup>4</sup>

1. See Chapter 20.

2. Govt. of India, *Tripartite Conclusions (1942-1967)*, p. 79.

3. *Ibid.*

4. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 234, par. 23.25.

In the U.S.A., most collective agreements provide for resort to arbitration as a final step in the settlement of grievances, and grievance procedures jointly worked out by the parties usually provide for voluntary arbitration as the last step.

In Great Britain also, many national collective agreements provide for arbitration of unresolved differences relating to application of the agreements during the period of their operation. Very often, the parties, at the time of entering into an agreement, also undertake to accept the decision of the arbitrator as binding. In case where a particular company enters into an agreement with the union in modification of a national agreement at the industry level, voluntary arbitration may be provided at the company level also.

### 3 Settlement of Disputes under the Influence of the State

The peaceful and smooth functioning of industrial relations is of vital importance to the community. Interruptions in production because of strikes and lockouts cause untold inconvenience and loss of economic welfare to people in general, especially if the supply of essential goods and services is stopped. The changing nature of strikes and lockouts involving entire industries has further strengthened the need for intervention by the State in the settlement of industrial disputes. The underdeveloped countries, which have launched upon vast programmes of economic development and have adopted planning, find that they cannot afford frequent interruptions in production. Therefore, there is a growing tendency on the part of the State to intervene and to seek to promote peaceful ways of settling industrial disputes in both the industrially developed and underdeveloped countries.

The most common ways in which the State intervention takes place are the following:

- (1) Compulsory establishment of bipartite committees;
- (2) Establishment of compulsory collective bargaining;
- (3) Compulsory investigation;
- (4) Conciliation and mediation (voluntary and compulsory); and
- (5) Compulsory arbitration or adjudication.

(1) *Compulsory establishment of bipartite committees*

It is well-known to students of industrial psychology and labour economics that, apart from such issues of conflict as wages and hours of work, bonus, pensions, gratuity etc., there are many other industrial grievances which, if allowed to accumulate and to fester, grow into big industrial disputes ultimately threatening interruptions in production.<sup>1</sup> Therefore, the State has passed enactments requiring the establishment of bipartite committees consisting of the representatives of workers and their employer at the plant or industrial level. These bipartite committees are given the power to settle differences between the workers and the employers as soon as they appear and thereby they prevent them from growing into big conflagrations. On the basis of the recommendations of the Whitley Committee, Joint Industrial Councils, District Councils and Works Committees were set up in Great Britain for considering matters affecting both labour and capital. Similarly, in India the Industrial Disputes Act, 1947 provides for the compulsory formation of Works Committees in industrial establishments employing 100 or more persons, if so required by the appropriate government. The Works Committees consist of representatives of the workers and employers and are charged with the responsibility "to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters."<sup>5</sup> The relevant rules framed by the Central Government under this Act lay down the details concerning the size of Works Committees, the selection of workers' representatives, terms of office, facilities for meeting, etc. The State Governments have framed similar rules requiring the formation of Works Committees in different industrial establishments. Many of these Works Committees are functioning successfully and discharging their functions in a responsible manner. However, most of them have not come to the expectations because of: (i) the reluctance and hostility of the employer or the trade union concerned, (ii) illiteracy and ignorance of the workers, and (iii) absence of leadership from the rank-and-file.

*centuries*

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Thus, the primary ideas behind the establishment of such bi-partite committees are: (a) giving encouragement to the parties concerned to settle and compose their differences by themselves in order to avoid the direct intervention of a third agency, and (b) facilitating the composition of the differences at their embryonic stages without causing work-stoppages.

While emphasising the importance of Works Committees in the settlement of industrial disputes, the Statements of the Objects and Reasons of the Industrial Disputes Act, 1947 said, "Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlement of industrial disputes infrequent." In the eyes of the framers of the Act, the Works Committees were to provide the king-pin in the machinery for the settlement of industrial disputes. The Act created a forum for the voluntary settlement of industrial disputes and imposed it on the employers. In a way, the provision for the constitution of Works Committees under the Industrial Disputes Act, 1947 meant the compulsory imposition of voluntarism in the settlement of industrial disputes.

## (2) *Establishment of compulsory collective bargaining*

As the State encourages and requires the establishment of bipartite committees for the purpose of composing grievances and differences between workers and their employer, it may also think it advisable to encourage and, if necessary, to force workers and employers to enter into formal collective bargaining through their representatives. The idea behind such a policy is to force the parties to seek to settle their differences through mutual negotiations and discussions before they decide to resort to strikes or lockouts. Where the parties themselves have set up a machinery for collective bargaining and negotiation, the imposition of collective bargaining by the State becomes unnecessary. But, if either or both the parties resist the establishment of collective bargaining and the State feels that collective bargaining helps the peaceful and democratic conduct of industrial relations, it may impose collective bargaining compulsorily. It was in this frame of mind that the Federal Government of the U.S.A. under President Roosevelt enacted the National Labour Relations Act, 1935 popularly known as the Wag-

ner Act. This Act made the refusal by the employer to bargain with the representatives of his employees an unfair labour practice and imposed penalties for the same. The Labour Management Relations Act of 1947, commonly known as the Taft Hartley Act, made the refusal to bargain either by the employer or by the trade union an unfair labour practice. Thus, in the U.S.A., the employers and the workers both are required by law to bargain collectively, if one of the parties so desires. However, the outcome of collective bargaining is not dictated by the government. Here again, the spirit is to require the parties to solve their dispute by their own efforts before they resort to a trial of strength. In India there is no such enactment.

### (3) *Conciliation and mediation*

The third method used by the State for promoting a peaceful settlement of industrial disputes is the provision of conciliation and mediation services. There is no essential difference between conciliation and mediation and the two terms are used interchangeably, though some people tend to differentiate between the two on the basis of the degree of the active role played by the third person. To some, the conciliator is more active and more intervening than the mediator who is said to perform a "go-messenger" service.

#### (A) *Voluntary conciliation and mediation*

Under the method of voluntary conciliation and mediation, the State sets up a conciliation and mediation machinery consisting of personnel trained in the art of conciliating disputes. The services of this machinery are always available to the disputants. Whenever they feel that the conciliator may help them in resolving their dispute or in breaking a deadlock, they may call upon the services of the conciliation machinery. The State provides the service without imposing any obligation on the disputants to use it. Sometimes, a conciliation service is empowered to be a little more active. The conciliator may inform the parties that his services are available and also request them to keep him informed of the developments in their negotiations.

The aim of the conciliator is to break the deadlock, if any, explain the stand and the view-points of one party to the other,

convey messages and generally keep the negotiations going. Suggestions may come from the conciliator or the mediator, but the parties are free to accept or reject them. It is the parties who ultimately decide the issues. They may come to an agreement, they may not. This sort of conciliation or mediation is not different from voluntary collective bargaining and may be said to be a mere continuation of the process of collective bargaining.

#### *(B) Compulsory conciliation and mediation*

In many countries, and in the same country for many disputes and industries, the State does not rest content with the mere creation of a conciliation service and making it available to the parties, leaving them free to make use of it if they so like. The State goes a step further; it imposes an obligation on the parties to submit their dispute to the conciliation service and makes it a duty of the latter to seek to conciliate the dispute. Meanwhile, the State requires the parties to refrain from causing any work-stoppage for the purpose of resolving the dispute so long as the conciliation proceeding is going on.

Generally, there is a time limit for the conciliators and mediators to conclude their efforts at conciliation. There are three main considerations for prohibiting the parties from causing work-stoppages and imposing this time limit. Firstly, it is felt that conciliation will provide a cooling off period during which emotional tensions may subside and a settlement can be arrived at. Secondly, it is felt that the freedom of the parties to settle their disputes even by causing work-stoppages should not be taken away from them for a long period. Thirdly, it is argued that, if conciliation does not achieve an early break-through, it is not very likely to succeed later.

If, at the end of the conciliation proceeding, the parties fail to settle their dispute, they are free to go on a strike or a lockout, but the State may further persuade the parties and use other methods for bringing about a peaceful settlement of disputes. On the other hand, if a settlement is arrived at, an agreement may be signed in the presence of the conciliator and it is declared legally binding on the parties.

In India both voluntary and compulsory types of conciliation are in existence.

### Practice in different countries

Under the Industrial Disputes Act, 1947, giving of a notice of strike or lockout in public utility services is obligatory on the parties before they go on a strike or declare a lockout, and under the rules, a copy of the notice has to be sent to the conciliator appointed by the government for particular geographical region or the industry where the parties are located. When the Conciliation Officer receives such a notice, it is his legal responsibility to seek to conciliate the dispute. The Conciliation Officer makes his best efforts to induce the parties to come to a settlement. In the event of a failure, he submits a report to the government stating the facts of the case and the reasons responsible for the failure. The government is free thereafter to take such steps as it deems fit for settling the dispute. The Act prohibits a strike or a lockout in a public utility service during the pendency of the dispute before a Conciliation Officer and seven days after the conclusion thereof.

Similarly, the appropriate government may appoint a Board of Conciliation and refer to it a particular dispute that threatens industrial peace. The Board of Conciliation has been vested with the power to enforce the attendance of the parties concerned for the purpose of conciliating the dispute. Strikes and lockouts are prohibited during the pendency of the conciliation proceedings before the Board of Conciliation and seven days after the conclusion thereof. The Board of Conciliation has the duty "to endeavour to bring about the settlement of a dispute referred to it and for this purpose to investigate the dispute and all matters affecting the merits and the right settlement thereof and to do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute."<sup>6</sup>

What has been said above shows that, under certain conditions, the parties can be forced to go through a conciliation process and to refrain from causing work-stoppages so long as the conciliation proceedings are going on. Not only this, any agreement arrived at during the course of the conciliation proceeding is legally

6. For details, see Chapter 20.

binding on the parties concerned, the violation of which is a penal offence.

At the same time, the parties are also free to make use of the services of the Conciliation Officers according to their choice without being subjected to any specific legal obligation. However, if an agreement is signed by the parties and the Conciliation Officer, the agreement becomes a settlement which is binding on the parties.

In Australia, under the Commonwealth Conciliation and Arbitration Act, Commissioners are empowered to intervene if no agreement is reached between the parties themselves. The Act empowers the Commissioners to convene a Compulsory Conciliation Conference consisting of the representatives of employers and employees and presided over by a Commissioner, or on the Commissioner's authorisation, by a Conciliator. A memorandum of agreement arrived at in the conciliation proceedings is, on the certification of the Commissioner, binding on the parties. If conciliation fails, the Commissioner settles the dispute by arbitration. In New South Wales, Queensland, South Australia, Conciliation Committees or Conferences work in direct conjunction with the Courts of Arbitration.

In New Zealand, the Industrial Conciliation and Arbitration Act provides for the establishment of Councils of Conciliation consisting of equal number of representatives of employers and workers concerned, to be presided over by a Conciliation Commissioner who is a permanent official of the Department of Labour. In case no agreement is voluntarily reached between a registered trade union and the employer concerned, either side may refer the dispute to the Council of Conciliation. If the parties so desire, a settlement arrived at in the process of conciliation may be made binding by an award of the Arbitration Court. If no agreement or only an incomplete agreement is reached, the dispute is referred to the Court of Arbitration for final disposal. Australia and New Zealand, like India, provide for both compulsory and voluntary conciliation.

The U.S.A. and Great Britain provide examples par excellence of voluntary conciliation. In the U.S.A., the Federal Government and also the State Governments maintain conciliation and mediation services, whose good offices are available all the time, and the

parties to a dispute are free to call upon them to help arrive at a settlement. In Great Britain also, similar services are maintained.

#### (4) *Compulsory investigation*

Another method of intervention by the State in the settlement of industrial dispute is compulsory investigation of the implications of a particular disputes. Many of the governments have assumed power under laws relating to industrial relations to set up a machinery to investigate into any dispute. The purpose of the appointment of a Court of Inquiry is essentially to find out the relevant facts and issues involved and to give them wide publicity so that the pressure of public opinion may force the recalcitrant party to give up its obstinate attitude. If the issues are brought to the knowledge of the public, the parties concerned may develop a reasonable and accommodative frame of mind. The primary sanction behind the effectiveness of the reports of such inquiries comes from the pressure of enlightened public opinion.

The second purpose behind the appointment of a Court or Board of Inquiry where strikes are prohibited during the preliminary investigation, as in the U.S.A., is to provide a cooling off period to the parties concerned so that they could reconsider their respective stands, realise the implications of their steps and, if possible, settle their disputes peacefully.

In India, under Section 6 of the Industrial Disputes Act, 1947, both the Central and State Governments have the power to constitute a Court of Inquiry for "enquiring into any matter appearing to be connected with or relevant to an industrial disputes." Under the Conciliation Act, 1896 and the Industrial Courts Act, 1919 of Great Britain, the Minister is empowered to constitute a Court of Inquiry to enquire into and report on the causes and circumstances of a dispute. Similarly, the Taft Hartley Act, 1947 of the U.S.A. empowers the President to appoint a Board of Enquiry whenever he believes that an actual or threatened strike imperils national health and safety. The Board of Enquiry investigates the dispute and reports to the President what the issues are, but is forbidden to make any recommendation for settlement. After the receipt of the Board's report the President may instruct the Attorney General to seek an injunction from the appropriate Federal Court to prohibit or end the strike, if any. Such an injunction, if issued, runs for a

maximum period of 80 days. In the interim period the President may reconvene the Board of Enquiry for a further report, but the Board is again forbidden to include any recommendation in the report.

In India, the Court of Inquiry has the same powers as are vested in a civil court under the Code of Civil Procedure in respect of: (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; and (d) in respect of matters prescribed under relevant rules.

#### (5) *Compulsory arbitration or Adjudication*

It is clear from what has been said of the other devices resorted to by the State for preventing the occurrence of industrial disputes and promoting their settlement in case they do occur that none of them guarantees their peaceful settlement. In spite of these pressures and inducements by the State, the parties still may prefer to resort to strikes and lockouts to settle their disputes. In the opinion of the government such strikes and lockouts may appear to be injurious to national and public interest and may cause irreparable damages. Under such conditions, the government may decide to refer the dispute to arbitration and force the parties to abide by the award of the arbitrator and at the same time prohibit the parties from causing work-stoppages. This means imposing compulsory arbitration or what is also known as adjudication. The main idea behind the imposition of compulsory arbitration is to maintain industrial peace by requiring the parties to refrain from causing work-stoppages and providing a way for settling the dispute.

#### *Different forms of compulsory arbitration*

The following are the two principal forms of compulsory arbitration based upon the nature of reference and nature of the award:

- (i) Compulsory reference but voluntary acceptance of the award; and
- (ii) Compulsory reference and compulsory acceptance of the award.

Under the first type a dispute is referred to a tribunal or Court of Arbitration for adjudication either by the government or the parties may be required by law to submit their dispute for arbitration, though they are left free to accept or reject the award when it comes. However, it is expected that once the issues have been examined by an impartial and independent authority and an award has been given, the parties will think thrice before rejecting such an award for fear of incurring public displeasure. It is expected that the pressure of public opinion would lead them to accept the award.

Under the second form of compulsory arbitration, it is not only that the government has the power to refer the dispute for adjudication, but also that the parties are put under a legal obligation to abide by the arbitration award. Law forces the parties to appear before the adjudicator and penalties are imposed on them for non-acceptance and non-implementation of the terms of the award. The adjudicators are vested with adequate powers to summon the parties and call for witnesses and to take such steps as are necessary for coming to a fair and reasonable conclusion. The parties are required to refrain from going on a strike or declaring a lockout during the pendency of the adjudication proceedings and during the period when the award is in operation.

Australia and New Zealand were pioneers in introducing compulsory arbitration, but later the system came to be adopted in many other countries of the world. The system is widely in force in Australian States, particularly, New South Wales, Queensland, South Australia and Victoria. The theory of compulsory arbitration in Australia, as in most other countries, is based on the proposition that "when agreement in an industrial dispute is not reached through negotiation between the employer and employees or their representatives or subsequently through conciliation by an independent public authority then that public authority should arbitrate."<sup>7</sup>

An Arbitration Court<sup>8</sup> may consist of one person only or a few persons with one member acting as the Chairman. Usually, the

7. Australian News and Information Bureau, *Conciliation and Arbitration*, December 1962, p. 1.

8. An Arbitration Court has been variously named e.g. Industrial Tribunal, Industrial Court, Labour Court, etc.

adjudicators are drawn from the judiciary. The qualifications and tenure of office, powers and functions of the adjudicators are, in general, prescribed under the law itself. Sometimes, representatives of employers and employees are also associated with the deliberations of the Court.

The powers of the Courts depend mostly on the objective for which they are set up. In cases where such Courts have been set up exclusively for deciding wage disputes, their powers are narrow. Wherever the object is to decide industrial disputes in general, the powers are usually wide. In general, however, the provisions of the laws with respect to the powers of the Court vary widely.

In most cases, the systems providing for compulsory conciliation and arbitration also provide for giving a legally binding character to an agreement mutually arrived at between the parties by an award of the Court. In some countries, if the parties to an agreement represent majority of the employees and employers, its provisions are compulsorily extended also to other employers and trade unions not parties to the agreement. Compulsory conciliation and constitution of tripartite wage boards generally form preceding steps before compulsory arbitration is resorted to.

### Compulsory Arbitration in India

Though a small beginning in this direction was made by the Bombay Industrial Disputes Act of 1938 which provided for the creation of a Court of Industrial Arbitration empowering it to decide cases relating to registration of unions, standing orders and legality of strikes etc., compulsory arbitration has essentially been a child of the Second World War for the country as a whole.<sup>9</sup> The exigencies of the war necessitated the adoption of certain emergency measures for preventing strikes and lockouts in industries. The fullest mobilization of the country's economic and manpower resources and the need for uninterrupted production of goods and services demanded that work-stoppages be prohibited. But the simple prohibition of strikes or lockouts under the authority of a law without, at the same time, providing for a fair and just settlement of the dispute that caused work-stoppages, would have been

9. See pp. 115-116.

of no avail. The workers, driven to desperation on account of rising prices and falling real wages would have violated any law and faced any penalties in order to protect their meagre living standards. Therefore, the prohibition of strikes and lockouts had to be combined with the provision of compulsory arbitration of disputes in order to convince the workers that their claims had received a fair hearing. Initially, the Bombay Industrial Disputes Act, 1938 was amended in 1941 empowering the Provincial Government to refer industrial disputes to the Court of Industrial Arbitration if it considered that the dispute would lead to serious outbreak or disorder affecting the industries concerned adversely and cause prolonged hardship to the community.

Later, in January 1942, the Government of India amended the Defence of India Rules by adding Rule 81-A in order to restrain strikes and lockouts. This Rule empowered the government to prohibit strikes and lockouts, refer any dispute to adjudication, require employers to observe such terms and conditions of employment as might be specified and enforce the decisions of the adjudication. Later, the Provincial Governments were also vested with similar powers. After the war, the Industrial Disputes Act, 1947 continued the practice of adjudication and now it has become an important feature of the law relating to the settlement of industrial disputes in the country.

The Industrial Disputes Act, 1947, as it stands amended up to date, provides for three types of adjudication authorities for the adjudication of industrial disputes, namely, Labour Court, Tribunal and National Tribunal.

The Labour Court and the Tribunal can be established both by the Central and State Governments, but the National Tribunal is set up only by the Central Government to adjudicate such disputes as involve any question of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by them. The Labour Court is intended to adjudicate them as relate to the propriety or legality of an order passed by the employer under the standing orders, discharge or dismissal of workmen, legality or otherwise of a strike or lockout. The Tribunal and the National Tribunal generally deal with such subject matters as wages, bonus, profit-sharing, rationalisation, allowances, hours of work,

provident fund, gratuity, etc. Strikes and lockouts are prohibited during the pendency of the proceedings before any of the adjudication authorities and two months after the conclusion of such proceedings and during any period in which an award is in operation in respect of any matter covered by the award.

The use of compulsory arbitration has raised controversies in India and opinions are widely divided as to its utility and efficacy in maintaining industrial peace and securing to the workers their just demands. Nevertheless, there does not appear any early prospect of the rigours of compulsory arbitration being relaxed under the existing economic and political conditions of the country.

#### COMPULSORY ARBITRATION *or Adjudication* vs. COLLECTIVE BARGAINING

The foregoing comments necessitate a discussion and critical evaluation of compulsory arbitration. It is also necessary to compare it to its only alternative collective bargaining and to find out which one of these is best suited to the needs of the peculiar economic and political situation that prevails in India.

The arguments for and against compulsory arbitration can be discussed under two heads: (a) arguments relating to its principle; and (b) arguments relating to its practice in India.

#### Arguments for Compulsory Arbitration

In spite of many arguments against compulsory arbitration, it has come to stay in India and there are influential protagonists of it. The supporters of compulsory arbitration assert its superiority over collective bargaining as a method of settling industrial disputes not only in the prevailing Indian conditions but also in principle. This point of view is presented below.

##### (a) *Relating to its principle*

Supporters of compulsory arbitration contend that adjudication, coercive though it may be, is superior to collective bargaining. Collective bargaining settles a dispute on the principle of trial by combat.<sup>10</sup> In the case of collective bargaining, it is not the just cause but the relative strength of the parties that ultimately triumphs. A strong union may take up a weak case and still win and vice versa.

10. See also pp. 18-22.

Compulsory arbitration, though imperfect, introduces an element of law and justice in the conduct of industrial relations. The judicial standards available to the judges in adjudication of industrial disputes may be imperfect, yet they are far better than the principle of 'might is right' that underlies collective bargaining.

Besides, as the institution of compulsory arbitration grows, so will industrial jurisprudence. The concept of what is just and fair may be nebulous and, to an extent, crude today, but it will get refined and become more acceptable with the development of compulsory arbitration. This is how any jurisprudence grows and industrial jurisprudence will also follow the same course. Further, it is true, no doubt, that compulsory arbitration is based upon the coercive power of the State, but the institution of collective bargaining is also rooted in the coercive power of the parties themselves. It is any time better to let the coercive power of the community as exercised by the State be the arbiter of the conflicting claims of labour and capital than to let the coercive powers of privately organised groups be the determinant of the outcome of such conflicts. The authority of the State should be used to prevent strong groups and organisations whether they belong to the employers or to the workers from holding the community to ransom. The workers and employers engaged in providing services vital to the community's health and safety are in a position to charge any prices for their services. Here, compulsory arbitration is in a position to help the community by imposing such terms and conditions of employment which appear fair to it and thereby keep the cost of production within reasonable limits.

*(b) Relating to prevailing Indian conditions*

The adoption of planning as an instrument of economic growth and the marginal, subsistence standard of living in the country demand that industrial peace be maintained in order to achieve planned targets. The adoption of free collective bargaining with the freedom to resort to strikes and lockouts would jeopardise the fulfilment of the objective of planning. Industrial peace is the supreme need of the hour. Collective bargaining may be democratic but it endangers industrial peace. Therefore, compulsory arbitration has to be used for the purpose of resolving industrial disputes.

Further, it is pointed out that compulsory arbitration in India does not suppress collective bargaining rather supplements it. The parties to an industrial dispute are free to settle it peacefully and, only if they fail to come to an agreement, compulsory arbitration comes into play. If the workers and the employers are so anxious to preserve their rights of collective bargaining, they can resolve all the disputes themselves without any threat or hindrance by the government.

So far as the arguments of heavy expenses and delay are concerned, the machinery of compulsory arbitration can be improved and is gradually improving. The government can also be made more responsible and discrete in the exercise of its power to refer disputes to adjudication. In the prevailing state of trade unionism in India, compulsory arbitration has conferred more benefits on workers than a divided trade union movement could have been able to achieve, otherwise. Compulsory arbitration might have, to some extent, weakened collective bargaining, but has helped the workers in many poorly organised sectors in securing significant gains.

### **Arguments against Compulsory Arbitration**

Opposition to the use of compulsory arbitration for the purpose of settling industrial disputes comes from many sources including trade unions, mostly of the left-wing, students of industrial relations and prominent personalities like V.V. Giri. On the other hand, sentiments in favour of compulsory arbitration are equally widespread.

#### ***(a) Relating to its principle***

The main argument against the principle of compulsory arbitration is that it leads to an authoritarian imposition of the terms and conditions of employment and suppresses the possible self-government in industries based upon the democratic freedom of the parties to resolve their disputes through collective bargaining. In a democratic society, industrial democracy, implying collective and joint determination of the terms and conditions of employment and the settlement of their disputes by the parties themselves without any outside interference, is no less important

than political democracy. It is contended that the parties should be free to work out their relations and sort out their problems by mutual discussions and negotiations, if possible, and even by strikes and lockouts, if necessary. According to this view-point, the use of coercive economic power by one party against the other is preferable to the use of the coercive power of the State to impose a settlement on the parties. The success of compulsory arbitration depends upon the coercive power of the State which penalises the parties for non-compliance with the provisions of the laws pertaining to compulsory arbitration. Any solution imposed from outside will never provide a lasting solution to the problems of industrial relations. Even if they fight for the time being, the parties will ultimately succeed in working out a lasting solution of their problems as they have to live together on a permanent basis. If they have to coexist, they will evolve the principles and the arrangements necessary for their co-existence. Compulsory arbitration is a poorer method for this purpose as compared to collective bargaining.

The second argument against compulsory arbitration relates to the absence of standards which can be used by arbitrators to resolve divergent interests and to judge the fairness or otherwise of conflicting claims. For example, in arbitrating claims for higher wages, what are the guides which are available to the arbitrator? What are just wages? What are fair rates of profits? What are just working hours? These are such questions, for the resolution of which, no objective standards are available in the present state of industrial jurisprudence. While the function of a judge in a civil dispute is that of locating the facts and applying to them the known law of the land, the arbitrator in an industrial dispute does not have any such laws which can guide him in resolving differences of opinion relating to economic interests. Whereas the Civil Judge is an interpreter of law, the arbitrator of an industrial dispute becomes a law giver. He performs the function that essentially belongs to the legislature. The arbitration award in industrial disputes becomes highly subjective. It is the psychological bent, mental make up and prejudices of the arbitrator that may finally decide the outcome of an arbitration proceeding. Under such conditions, the explanations behind an award are nothing more than a rationalisation of the arbitrator's prejudices. It is also argued that

judges are essentially conservative in nature and detest making far-reaching departures from the *status quo*. This puts the worker at a disadvantageous position because their interests often lie in challenging the existing economic order and the existing distribution of the fruits of industry.

Thirdly, compulsory arbitration is criticised for its inability to ensure industrial peace the maintenance of which is claimed to be the primary justification for its adoption. It is pointed out that no award can be enforced when the masses of workers are dissatisfied with it and have developed sentiments against its provisions. Ultimately, the arbitrators may abandon their quest for a just basis for arriving at an award and look for such solutions which would be acceptable to the parties and would avoid work-stoppages. In many cases, the quest for a just solution may run counter to the quest for industrial peace. In India, despite the operation of compulsory adjudication for a period of more than 30 years, the number of industrial disputes workers involved, and mandays lost has not shown a declining trend. On the other hand, a number of strikes have taken place in public utility services and other industries, very often in complete defiance of the penal provisions of the Industrial Disputes Act, 1947 and Essential Services Maintenance Act, 1968.

Finally, compulsory arbitration is said to vitiate industrial relations by creating a litigious atmosphere. Under compulsory arbitration, trade unions may make fantastic demands because they know that these demands will not be required to be backed and secured through the organised strength and solidarity of their members. The blame for the non-fulfilment of the demands can be easily shifted to the courts of arbitration. Similarly, the employers develop the habit of saying 'no' to every demand, thinking that any concessions made earlier would weaken their position before the tribunals to which the disputes would be ultimately carried. Thus, compulsory arbitration creates an extremely artificial atmosphere because both the parties try to evade the real issues as long as possible. Compulsory arbitration then lays an excessive stress on legalism which may satisfy the law but may not solve the problem. It is agreed on all sides that a clinical rather than a legalistic approach to industrial disputes is more effective in creating healthy industrial relations.

*(b) Arguments against compulsory arbitration as practised in India*

The main argument relating to compulsory arbitration as practised in India at present is that it involves long delays and heavy expenditure which put the trade unions in a comparatively disadvantageous position. The employers, by raising legal quibblings and points of law and by utilising the services of legal experts, succeed in carrying cases up to the Supreme Court of India. This means that starting from the Tribunal and ending up in the Supreme Court, thus, it may take many years before a final legal verdict is available on an industrial dispute. How many unions in this country are in a position to match the resources of the employers in a legal battle?<sup>11</sup> Can the workers wait that long? Can they not in the meantime be driven to desperation and resort to violent methods which could be very well avoided if the solutions came early?

Secondly, compulsory arbitration, as practised in India at present, depends in most cases upon the reference of a dispute to the adjudication authorities by the appropriate government in its discretion. As the government has the discretionary power to refer a dispute or not to refer it to adjudication, the government is in a position to pick and choose. It is alleged by many trade unions, particularly of the left wing, that the exercise of this discretion is influenced by political pressures and, in such references, the INTUC gets a preference. Thus, it is often said that the Industrial Disputes Act, 1947 places an instrument in the hands of the government which ultimately boosts up the growth of the INTUC unions at the cost of others.

Thirdly, the practice of compulsory arbitration in India has hindered the growth of a genuine and effective trade union movement. It has consequently weakened collective bargaining by making the workers and their leaders look up to the courts of law rather than to their own strength and organisation for the redressal of grievances and the achievement of their demands. The main task of many trade union leaders is to keep loitering in the corridors of the State Secretariats and to hover round the Minister of Labour to secure the reference of a dispute to adjudication. Many trade

11. For details concerning poor finances of Indian trade unions, see pp. 155-159.

unions spring to life at the time of submitting a set of demands for the purposes of getting them referred to an appropriate court and become silent after an award has been delivered. The number of registered trade unions has increased since 1947, no doubt, but it cannot be said that the trade union movement has also been proportionately strengthened. It was in this context that V.V. Giri said that compulsory arbitration was his enemy number one.

### **Machinery for the Settlement of Industrial Disputes in Great Britain**

In Great Britain, industrial disputes are settled for the most part by collective bargaining between the parties themselves. Except during the world wars, the State has generally refrained from compelling the parties to get their differences settled by government agencies. Its main efforts have been directed towards encouraging the formation of joint voluntary machinery and assisting the parties, through the provision of conciliation and arbitration services, in the settlement of their disputes. In some cases, attempts have been made through the constitution of Courts of Inquiry to bring the real causes of the dispute to the notice of the Parliament and the public in order to enable them to exercise a persuasive impact on the settlement of the issues. Recourse to compulsory arbitration for the settlement of industrial disputes was taken during both the world wars, but was given up when the need of its continuance was no longer felt. In 1959, compulsory arbitration was again introduced in a modified form by Section 8 of the Terms and Conditions of Employment Act, 1959. Of late, the Industrial Relations Act, 1971, though not providing for machineries for the settlement of industrial disputes in general, envisaged a greater measure of State intervention in such areas of industrial relations as collective bargaining, rights of individuals and unfair industrial practices, and established a new system of industrial courts. The machineries established by the State for the prevention or settlement of industrial disputes are discussed in brief below.

#### **Conciliation Services**

A provision for voluntary conciliation of industrial disputes was made as early as 1896 by the Conciliation Act of that year.

Since then the parties have been increasingly utilising the conciliation services offered by the State. The Department of Employment provides an extensive conciliation service staffed by officials. The staff of the Department try to remain in close contacts with representatives of employers and trade unions at all levels and keep themselves in touch with negotiations. In most cases, their help is requested by one or both of the parties, but in some cases, it is volunteered. The aim of the conciliation services is generally to assist the parties to reach a settlement for themselves or to persuade them to allow the dispute to be referred to arbitration or inquiry. In some cases, Boards of Conciliation are also constituted. In practice, a large number of industrial disputes, sometimes going beyond 400 mark, are settled with the help of conciliation services every year. In the views of the Royal Commission on Trade Unions and Employers' Association (1968), "this service makes a very considerable contribution to good industrial relations."<sup>12</sup>

### Voluntary Arbitration

The Conciliation Act, 1896 and the Industrial Courts Act, 1919 provide for arbitration of industrial disputes on the application of both the parties. Under the Industrial Courts Act, 1919, a dispute may be referred for arbitration to a permanent Industrial Court or to one or more persons specially appointed for the purpose or to a Board of Arbitration. The parties are, however, free to accept or not to accept the award, but where the parties freely accept it, it forms a term or condition of the contract of employment. After the passing of the Industrial Relations Act, 1971, the Industrial Court is known as the National Arbitration Board.

### Courts of Inquiry

The Secretary of State is empowered to appoint Courts of Inquiry under the Conciliation Act, 1896 or the Industrial Courts Act, 1919 even without the consent of the parties. He also has general powers to set up an inquiry into industrial disputes. Such inquiries are primarily a means of informing the Parliament and

12. U.K. *Report of the Royal Commission on Trade Unions and Employers' Associations*, 1968, p. 115, par. 434.

public opinion of the facts and the underlying causes of a dispute.

### Compulsory Arbitration

As said earlier, in Great Britain, a recourse to compulsory arbitration has been primarily a war-time measure. During the First World War, the Munition of War Acts adopted the principle of compulsory arbitration with binding awards. Strikes and lockouts were prohibited in all kinds of munition works and, in case the parties failed to settle disputes themselves, these could be referred to compulsory arbitration. The Ministry of Munition was empowered to make the awards binding in all munition trades under certain circumstances.

Similarly, during the Second World War, under the Conditions of Employment and National Arbitration Order 1940, strikes and lockouts could be prohibited to avoid impeding the war efforts. The Order set up a National Arbitration Tribunal and provided for compulsory arbitration of disputes by the Tribunal if the matter could not be settled otherwise by negotiation or voluntary arbitration. Strikes and lockouts, however, were not illegal if the Minister of Labour, having received the report of the dispute, failed to secure settlement within three weeks. The National Arbitration Tribunal normally consisted of an independent Chairman and one each from the panel of trade unions and employers. The Minister was required to see that any existing joint machinery suitable for settling the dispute was used before it was referred to the Tribunal. An award or decision made as a result of such a reference either under any agreed procedure or by the National Arbitration Tribunal became legally binding.

Both the employers and trade unions had favoured the initiation of compulsory arbitration and prohibition of strikes and lockouts to avoid impeding the war efforts. During the period immediately following the Second World War, there was no strong demand from either side for the withdrawal of the Order. Even the TUC, though opposed to placing compulsory arbitration on a permanent footing, favoured its temporary retention in the post-war years in view of the economic difficulties facing the country. As such, the Conditions of Employment and National Arbitration Order was prolonged even beyond the war period.

However, the prolongation of the Order created a strange situation. On the one hand, the Order imposed a sort of total prohibition of strikes and lockouts and participation in illegal strikes and lockouts was a criminal offence. On the other hand, the repeal of the Trade Disputes and Trade Unions Act, 1927 in 1946 relaxed the restrictions on strikes and lockouts. As a result, the Order of 1940 could not prevent strikes from taking place, and the provisions of the Order pertaining to prohibition of strikes and criminal prosecution could not be effectively enforced. By 1950, the Order had become a subject of strong criticism from various corners. Ultimately, it was replaced in 1951 by a new Industrial Disputes Order.

The terms of the new Industrial Disputes Order, 1951 were drawn in agreement with the British Employers' Confederation, the TUC, and the representatives of nationalised industries. The Order abolished the penal prohibition of strikes and lockouts, but retained compulsory arbitration in a modified form. The Order replaced the previous National Arbitration Tribunal by the Industrial Disputes Tribunal.

On the trade union side, disputes could be referred to the National Disputes Tribunal only in respect of such a trade union which habitually took part in the settlement of terms and conditions of employment in the industry or a section of the industry or the undertaking concerned; or which, in the absence of a negotiating machinery, represented a substantial proportion of the workers employed. Thus, break away unions and other unrecognised bodies which defied the established voluntary machinery could not make use of the statutory machinery. On the side of employers, disputes could be reported to the Minister for action by employers' associations or individual employers, but not on behalf of them. Besides, it was also provided that no reference of a case could be made to the Industrial Disputes Tribunal, which could be resolved by the existing voluntary arrangements. Therefore, disputes could be referred to the Tribunal only where no agreed arbitration arrangements existed, or where any other voluntary arrangements had been used and had failed. The Minister could stay arbitration proceedings or refuse access to the Tribunal in the event of a stoppage of work or a substantial breach of agreement. During the course of time, both the employers and the trade unions became critical

of the working of the Tribunal, which was ultimately wound up in 1959.

The element of unilateral arbitration was subsequently retained by Section 8 of the Terms and Conditions of Employment Act, 1959. Under this section of the Act, representative trade unions or employers' organisations are enabled to secure adjudication by the Industrial Court (National Arbitration Board after the passing of the Industrial Relations Act, 1971) in cases where they think that an employer is observing terms and conditions of employment less favourable than those established by an agreement or award. If the Industrial Court finds that the claim is well-founded, it makes an award requiring the employer to observe terms and conditions which are not less favourable than those on which the claim was based. The award in effect becomes an implied term of the contract of employment of the workers concerned.

There have been separate courts to deal with disputes between an individual employee and his employer as distinct from collective disputes. The Tribunals created under the Industrial Training Act, 1964 deal with disputes not only under this Act, but also with those under the Redundancy Payments Act, 1965, certain disputes under the Contracts of Employment Act, 1963, and a number of other issues. The Industrial Relations Act, 1971 renames the Tribunals as Industrial Tribunals, but extends their scope by providing that they are also to exercise jurisdiction under Contracts of Employment Act, 1963, Redundancy Payments Act, 1965, Dock and Harbours Act, 1966, Selective Employment Payments Act, 1966, Equal Pay Act, 1970 and the Industrial Relations Act, 1971. The county courts and the High Court also deal with many of the matters arising out of the contracts of employment. The magistrates' courts are also empowered to decide cases involving manual workers in certain cases.

A new system of industrial relations courts has been envisaged under the Industrial Relations Act, 1971. The Act provides for the appointment of a National Industrial Relations Court at the higher level, and Industrial Tribunals at the lower level with expanded functions and enlarged scope. Under the Act, Industrial Tribunals are in general empowered to hear cases relating to individuals. The NIRC is to hear cases which are more general in application including those relating to collective agreements and registration of trade unions and employers' associations. Except

in a few cases, the NIRC is empowered to hear appeals on points of law from the Industrial Tribunals.

### **Machinery for the Settlement and Prevention of Industrial Disputes and Preservation of Industrial Peace in India.**

In any discussion of the machinery for the prevention and settlement of industrial disputes in India or elsewhere, one point to be constantly kept in view is that industrial disputes, in the sense of being differences between the employers and their employees regarding the terms and conditions of employment, cannot be prevented from arising under the industrial organisation of to-day. Differences will always arise. Therefore, what can partly, if not wholly, be prevented is the work-stoppage resulting from the industrial disputes. If an effective machinery is available for settling the disputes amicably, the necessity for strikes and lockouts can be reduced. Hence, a machinery for the prevention of industrial disputes should really be termed a machinery for the prevention of strikes and lockouts.

In keeping with the requirements of a parliamentary democracy and of the private enterprise economy, the State in India does not interfere with the basic freedom of the employers, their employees and the trade unions to conduct their relations and to compose their differences in a manner they think best. Neither the manner nor the content of collective bargaining is regulated by the State. However, as the country has embarked upon a programme of planned economic development and is plagued by all-round scarcities, it is not in a position to leave the parties completely free to settle their disputes, if necessary, by indulging in work-stoppages also. Therefore, the basic elements of the State industrial policy flow from (a) the requirements of the free-enterprise economy within the framework of parliamentary democracy and (b) the requirements of a programme of planned economic development. There are five such elements. These are:

- (1) Leaving the parties free to settle their differences in a way they like best, but without causing work-stoppages i.e. collective bargaining without the right to strike and declare a lockout;

- (2) Assisting the parties by the provision of conciliation services to arrive at such a peaceful settlement;
- (3) In case the parties still fail to settle their disputes in a peaceful manner, imposing on them compulsory arbitration, if the State deems it fit;
- (4) Imposing certain restrictions on the right to strike and declare a lockout in the case of some industries of public importance and under certain conditions;
- (5) Establishing a number of non-statutory bodies for the purpose of working out the guiding principles of the relations between the employers and the employees and recommending actions so as to prevent industrial disputes from arising.

The first four of the elements mentioned above are contained in the statutes enacted by the Central Government and also by a few of the State Governments. The Central Act is the Industrial Disputes Act, 1947 and the States Acts are: the Bombay Industrial Relations Act, 1946, the U.P. Industrial Disputes Act, 1947 and the Madhya Pradesh Industrial Relations Act, 1960. The fifth element of the basic policy flows from the administrative action both of the Central and State Governments without having any statutory enactments.

### Statutory Machinery

A detailed discussion of the machinery created by the statutes is provided in Chapter 20 relating to industrial disputes legislation. In a summary form, it can be said that the statutory machinery consists of: (a) Works Committees, (b) permanent conciliation services for particular geographical areas or industries both at the Central and State levels, (c) *ad hoc* Boards of Conciliation at the Central and State levels, (d) *ad hoc* Courts of Inquiry at the Central and State levels, (e) adjudication authorities consisting of Tribunals and Labour Courts at the Central and State levels, and (f) National Tribunals at the Central level.

Both the Central and State Governments are empowered to require the employers of industrial undertakings employing 100 or more workmen to constitute a Works Committee consisting of representatives of the employer and the workmen. The Works Committees are intended to promote measures for securing and

preserving amity and good relations between the employer and the workmen and to that end to comment upon matters of common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

In pursuance of the provisions of the Industrial Disputes Act, 1947, permanent conciliation services have been established by both the Central and State Governments for particular geographical areas or industries. The Conciliation Officers are required to hold conciliation proceedings in the case of public utility services where a notice of strike or lockout has been given, but in other cases, it is up to them to do so. A settlement arrived at in the course of conciliation proceedings is binding on the parties. The government is empowered to refer at any time an industrial dispute pending before a Conciliation Officer to an adjudication authority for decision. A Board of Conciliation is appointed as and when necessary and performs the same functions as performed by Conciliation Officers. Conciliation services have also been maintained under a few State legislations e.g. the Bombay Industrial Relations Act, 1946, the U.P. Industrial Disputes Act, 1947 and the M.P. Industrial Relations Act, 1960.

Courts of Inquiry may be set up by the Central or State Government when considered necessary for the purpose of inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

The adjudication authorities set up under the Industrial Disputes Act, 1947 consist of Labour Courts and Tribunals at both the Central and State levels and National Tribunals at the Central level. The matters under the jurisdiction of Labour Courts and Tribunals have been specified under the Act. The National Tribunals are set up by the Central Government to adjudicate upon a dispute involving any question of national importance or of such nature that industrial establishments situated in more than one State are likely to be interested in or affected by it. The adjudication award is legally binding. Adjudication authorities have also been set up under a few State legislations.

The parties to an industrial dispute are required not to resort to work-stoppage if the dispute is pending before a Board of Conciliation or any adjudication authority. Additional restrictions on the right to strike and lockout have been imposed in the case of public utility services.

## Non-statutory Bodies

The non-statutory bodies discussed in this section do not deal with any specific dispute between employers and employees in a particular industry and, therefore, they cannot be said to constitute a dispute-settling machinery. However, their work has a powerful influence on the course and character of industrial relations in the country. Many important issues likely to cause tensions in industrial relations or result in specific industrial disputes are brought for discussions before them. Such discussions and conclusions, if any, not only help the public authorities in the formulation of their labour policy, but also clarify and modify the thinking and attitude of the employers, the workers and their organisations. Thus, the contribution of these bodies to the maintenance of industrial peace, though imperceptible and general, is no less significant. That is why a discussion of the working of these bodies is thought relevant here.

The non-statutory bodies exist at different levels such as the Indian Labour Conference and Standing Labour Committee at the national level; Wage Boards and Industrial Committees at the industry level; and State Labour Advisory Boards at the State level. The primary purpose of these organisations is to work out the guiding principles of the relations between employers and employees in order to prevent industrial disputes from arising.

### Indian Labour Conference and Standing Labour Committee

The Indian Labour Conference and the Standing Labour Committee, patterned after the ILO, are tripartite in character consisting of representatives of the Central and State Governments, employers and workers. Both of them were set up in 1942 with the initial membership of 44 of the Indian Labour Conference and 20 of the Standing Labour Committee. The composition of the Indian Labour Conference and Standing Labour Committee was originally based on the model of the International Labour Conference and Governing Body of the ILO, respectively i.e. both bodies were expected to ensure equal representation of the employers and workers, and the representatives of the government being equal to those of the employers and workers taken together. As a result of the reorganisation of States in 1956, the demand for

representation by employing Ministries and public sector corporations and the emergence of new national centres of trade unions, the composition of both the bodies has undergone a series of changes in the course of time and there is no precise fixity in their strength and composition today. A delegate to the Indian Labour Conference is authorised to bring two advisers (one official and the other non-official) with him, but the advisers are not allowed to participate in the discussions, unless authorised by the member concerned and permitted by the Chairman. Decisions in these national bodies are arrived at on the basis of a consensus arising out of the discussions rather than on formal voting, although a provision exists in the rules of both the Indian Labour Conference and the Standing Labour Committee for taking decisions by a two-third majority.

The main objectives underlying their establishment were: promoting uniformity in labour legislation; laying down of a procedure for the settlement of industrial disputes; and discussing all matters of national importance as between employers and employees.<sup>13</sup> To that effect, the Indian Labour Conference advises the Government of India on matters brought to it by the Government. In the early stages, the Standing Labour Committee made deliberations on its own or on matters sent to it for consideration by the Indian Labour Conference, which in turn, made the final recommendations. In the course of time, both became deliberative bodies; the difference remained only in the degree of representation. The scope of the deliberations of both the bodies is confined mainly to labour matters in the country. The agenda for the discussions is prepared by the Ministry of Labour (Govt. of India) after taking into account the suggestions made by the member organisations. The Indian Labour Conference meets annually, but the Standing Labour Committee meets as and when necessary.

The two national bodies have exercised a significant influence on the evolution of government's labour policy and the course of industrial relations. They have facilitated the enactment of central labour legislation on various subjects and promotion of uniformity in labour legislation in the country. Moreover, the deliberations of these bodies have helped reaching a consensus regarding minimum wage fixation, introduction of health insurance and provident

13. Govt. of India, *Consultative Machinery in the Labour Field*, p. 3.

fund schemes, enactment of new labour laws and modification of the existing ones. The Indian Labour Conference and the Standing Labour Committee have also contributed much to the formulation of the procedures for the settlement of industrial disputes. The procedure of settling industrial disputes as envisaged in the Industrial Disputes Act, 1947 is a direct outcome of the deliberations of these bodies. The Code of Discipline and the Code of Conduct evolved at the Indian Labour Conference have also played an important role in influencing the pattern of industrial relations. Besides, many social, economic and administrative issues concerning labour have also been the subject matters of the deliberations in these bodies. The Indian Labour Conference has contributed much by discussing and evolving a consensus in respect of plan proposals, particularly those having a direct relevance to labour.<sup>14</sup>

### Industrial Committees

The establishment of Industrial Committees for specific industries was the outcome of the 1944 session of the Indian Labour Conference. Although no rigid constitution was laid down in respect of these Committees, the policy of their remaining tripartite in character and equal representation of employers and workers was accepted. Within the framework of this broad policy, the actual composition is decided afresh each time a meeting is convened. These Committees were set up with a view to considering the special problems of the industries concerned. The first such Committee was set up in 1947 for plantations. At present Industrial Committees are in operation for plantations, coal mining, cotton textiles, cement, tanneries and leather goods manufactories, mines other than coal, jute, building and construction, chemical industries, iron and steel, road transport, engineering industries, metal trades, electricity, gas and power, and banking. Meetings of Industrial Committees are, however, not held regularly; these are convened as and when required. The Industrial Committees, particularly those for plantations, coal mining and jute textiles, cement and iron and steel, have played a notable role by way of

14. For details of the subjects discussed and consensus evolved at the Indian Labour Conference and Standing Labour Committee, see Govt. of India, *Tripartite Conclusions (1942-1967)*, pp. 1-156.

proposing agreed solutions to many pertinent issues concerning the respective industries.

### **Wage Boards**

Non-statutory Central Wage Boards first came to be set up in 1957 primarily as a result of the recommendations of the Second Five Year Plan which observed:

Statistics of industrial disputes show that wages and allied matters are the major source of friction between employers and workers. The existing machinery for the settlement of disputes namely Industrial Tribunals, has not given full satisfaction to the parties concerned. A more acceptable machinery for settling wage disputes will be one which gives the parties themselves a more reasonable role in reaching decisions. An authority like a tripartite wage board, consisting of equal representatives of employers and workers and an independent chairman will probably ensure more acceptable decisions. Such wage boards should be instituted for individual industries in different areas.<sup>15</sup>

In view of the growing importance of the wage board system in preference to tribunals, the Third Five Year Plan also recommended giving it a further encouragement. The first non-statutory Wage Board was set up for the cotton textile industry in 1957. By now, Wage Boards have come to be set up for a number of industries including, cotton textile, sugar, cement, jute, tea plantation, coffee plantation, rubber plantation, iron and steel, coal mining, iron ore mining, limestone and dolomite mining, engineering, ports and docks, non-journalist employees, leather and leather goods, electricity undertakings and road transport.

A Wage Board consists of an impartial Chairman, two other independent members, and two or three representatives of employers and workers each. The Boards are purely recommendatory bodies and are dissolved after they have submitted their recommendations. The most important function performed by a Wage Board is to determine the wage structure for the industry concerned and to specify the categories of employees to be brought under the purview of the wage fixation. In some cases, they have also been

15. Govt. of India, Planning Commission, *The Second Five Year Plan*, p. 578.

asked to deal with such questions as gratuity, hours of work and bonus. Numerous wage disputes, which were hitherto resolved in a scattered way, have come to be resolved uniformly at the industry level as a result of the operation of Wage Boards. A study of the working of Wage Boards will show that they work mainly as forums of collective bargaining at the industry level.<sup>16</sup>

### Other Tripartite Bodies at the Central Level

In addition to the Indian Labour Conference, Standing Labour Committee, Industrial Committees and Wage Boards, other tripartite bodies have also been functioning at the central level. Notable among them are the Central Implementation and Evaluation Committee, Central Board for Workers' Education and National Productivity Council. Besides, certain *ad hoc* committees have been constituted according to the needs of the situation. In some cases (e.g. in the case of the National Productivity Council), interests other than those of employers, workers and government have also been represented.

### State Labour Advisory Boards

State Labour Advisory Boards or Committees on the pattern of the Indian Labour Conference have also been set up in almost all the States in the country. In these Boards also, parity in representation of employers and workers has been maintained. In some cases, other interests have also found representation. "These Boards provide a forum for the representatives of government, employers and employees to discuss problems so as to maintain and promote harmonious industrial relations and to increase production. They advise the State Governments on all matters relating to labour."<sup>17</sup> Experience has shown that these Boards have contributed much in resolving many labour issues, particularly in the fields of industrial relations and labour welfare.

### Other Tripartite Bodies at the State Level

In addition to the Labour Advisory Boards/Committees, other tripartite bodies have also been set up for specific purposes or

16. For details, see P.R.N. Sinha, *Wage Determination*, pp. 222-250.

17. Govt. of India, *Consultative Machinery in the Labour Field*, p. 47.

industries. However, wide variations exist in the nature or type of these bodies. Amongst the important tripartite committees functioning in the States are: Implementation and Evaluation Committees, Committees for particular industries (on the pattern of Industrial Committees at the central level) and Labour Welfare Boards or Committees. Some of these are permanent, while others are constituted as and when necessary.

### NCL on the Methods of Settling Industrial Disputes

The National Commission on Labour gave a somewhat detailed consideration to the working of the various methods of settling industrial disputes in the country and their relative effectiveness in the light of the recent changes in the field of industrial relations and suggested certain basic changes in the existing statutory arrangements. The recommendations of the Commission regarding the methods and machinery for settling industrial disputes are discussed under separate heads below.

#### (A) *Collective bargaining*

The basic point at issue before the Commission, which had also aroused considerable controversy for a long period of time, was whether to replace compulsory adjudication by collective bargaining or to allow the system of compulsory adjudication to continue. Both the points of view were placed before the Commission with equal force. Although it realised that there had been "an increasingly greater scope for and reliance on collective bargaining", the Commission did not favour doing away with compulsory adjudication. In this regard, the Commission held the view, "...any sudden change replacing adjudication by a system of collective bargaining would neither be called for nor practicable. The process has to be gradual. A beginning has to be made in the move towards collective bargaining by declaring that it will acquire primacy in the procedure for settling industrial disputes."<sup>18</sup> "Nevertheless, the Commission hoped that its recommendations pertaining to the statutory recognition of a representative union as the sole bargaining agent would facilitate the promotion of collective bargaining

18. Govt. of India, *Report of the National Commission on Labour, 1969*, p. 327, par. 23.36.

in the country. As commonly accepted, the Commission realised that in order to encourage collective bargaining, there is the need to redefine the place of strikes and lockouts in the scheme of industrial relations as "collective bargaining cannot exist without the right to strike/lockout." A pertinent recommendation of the Commission is that the collective agreements are to be registered with the proposed Industrial Relations Commission.

*(B) Voluntary arbitration*

The Commission realised that in the absence of a widespread use of collective bargaining, voluntary arbitration cannot make much headway. However, it felt that "with general acceptance of recognition of representative unions and improved management attitudes, the ground will be cleared, at least to some extent, for wider acceptance of voluntary arbitration."<sup>19</sup> It will be then that the National Arbitration Promotion Board could be expected to play a more effective role in promoting voluntary arbitration.

*(C) Conciliation and adjudication (Industrial Relations Commission)*

The National Commission on Labour has suggested certain major changes in the structure and functioning of the existing conciliation and adjudication machineries the working of which had been subject to severe criticism from different corners. Some of the glaring weaknesses of the existing arrangements highlighted by the Commission were: delays and expenditure involved; the *ad hoc* nature of the machineries; the oft-repeated allegations of political pressures and interference in their working and discretion vested in the government in the matter of reference of disputes. The views expressed before the Commission were strongly in favour of reforming the present industrial relations machinery "so as to make it more effective and more acceptable." Thus, realising that there is a need for "a formal arrangement which is expeditious in its functioning and which is equipped to build up the necessary expertise", the National Commission on Labour recommended the replacement of the existing *ad-hoc* machinery by a permanent Industrial Relations Commission at the national and State levels, entirely independent of the administration and combining in itself both the

19. *Ibid.*, p. 324, par. 23.26.

conciliation and adjudication functions.

The Industrial Relations Commission at the national level is to be appointed by the Central Government for industries for which the Central Government is the appropriate authority. The National Industrial Relations Commission is to deal with such industrial disputes which involve questions of national importance or which are likely to affect or interest establishments situated in more than one State. This means that the NIRC will deal with such disputes which are presently dealt with by the National Tribunals set up under the Industrial Disputes Act, 1947. An Industrial Relations Commission is also to be set up in each State for settlement of disputes for which the State Government is the appropriate authority.

The strength of the IRC is to be decided taking into account the work-load and the need for expeditious disposal of cases, but the total membership is not to exceed seven. The IRC is to be constituted with a judicial person as the President and an equal number of judicial and non-judicial members. The non-judicial members must be eminent in the field of industry, labour or management. The judicial members of the IRC including its President are to be appointed from among persons who are eligible for appointment as Judges of a High Court. The President of the NIRC is to be appointed by the Central Government in consultation with a committee consisting of the Chief Justice of India, the Chairman of the Union Public Service Commission and the seniormost Chief Justice in the High Courts. Other members of the NIRC are to be appointed by the Central Government in consultation with the Chief Justice of India, the Chairman of the UPSC and the President of NIRC. The President of the SIRC is to be appointed by the State Government in consultation with the Chief Justice of India, the Chief Justice of the State and the Chairman of the State Public Service Commission. Other members of the SIRC are to be appointed by the State Government in consultation with the Chief Justice of the State High Court, the Chairman of the State Public Service Commission and the President of the SIRC.

### **Functions of the IRCs**

The main task of the IRCs will be to take over from the governments the functions which they are discharging today in respect

of the settling of industrial disputes. The IRC, whether at the national or State level, will perform three main functions: (a) adjudication of industrial disputes, (b) conciliation, and (c) certification of unions as representative unions. The Commission will have at its disposal the necessary expertise in all three areas.

The adjudication wing of the IRC will consist of persons of eminence with judicial training to adjudicate on industrial disputes as and when necessary. The Conciliation Wing of the IRC is to consist of Conciliation Officers with prescribed qualifications and status. Persons with or without judicial qualifications are eligible for appointment as Conciliation Officers. The function relating to certification of unions as representative unions is to vest with a separate wing of the IRC. The NIRC, where it considers necessary, may get the representative character of unions determined by the SIRC.

### **Procedure for the Settlement of Industrial Disputes**

The National Commission on Labour has also suggested a detailed procedure for the settlement of industrial disputes by the machineries envisaged under its recommendations.

In case the parties fail to reach an agreement by mutual negotiations and agree to refer the dispute to voluntary arbitration (before serving a notice of strike/lockout), the IRC is to help the parties in choosing an arbitrator mutually acceptable to them. If negotiations have failed and the notice of strike/lockout has been served, either party may approach the IRC for making available the services of a conciliator to help them arrive at a settlement before the expiry of the date of strike or lockout, as the case may be.

In essential services or industries, if collective bargaining fails and the parties do not agree to voluntary arbitration, the failure of the negotiations is to be reported to the IRC by either of the parties and a copy sent to the appropriate government. On receipt of such a notice, the IRC is required to adjudicate upon the dispute and the award is final and binding on the parties. In case of other services or industries, where negotiations have failed and the parties do not agree to refer the dispute to voluntary arbitration, the IRC, on receipt of the notice of direct action but during the period of notice, may offer its good offices for the settlement of the dispute.

If no settlement is reached before the expiry of the notice period, the parties are free to resort to direct action. In case, however, the direct action continues for 30 days, the IRC is required to intervene for promoting a settlement.

When a strike or lockout has commenced, the appropriate government may approach the IRC for its termination on the ground of the security of State, national economy or public order. If, on hearing the government and the parties, the IRC is satisfied that the termination is called for, it may make such an order after recording the reasons for doing so. It will then adjudicate upon the dispute.

An industrial dispute being dealt with by the State Industrial Relations Commission may be taken over by the National Industrial Relations Commission if it is likely to have an impact in similar industrial undertakings in other States. This may be done by the NIRC on its own initiative or on a request by the Central Government or on transmission by a SIRC. Similarly, the NIRC may also remit a case to a SIRC for decision if, in the opinion of the NIRC, it is desirable or expedient that the dispute be dealt with by the appropriate SIRC.

The National Commission on Labour has also specified the circumstances in which workers are entitled to wages for the periods of a strike or lockout.

An award made by the IRC in respect of a dispute raised by a recognised union is to be binding on all workers in the establishment(s) and employer(s). If the employer dismisses or discharges an employee during the pendency of a strike or thereafter for his participation in the strike, it is deemed to be an unfair labour practice on the part of the employer and the employee concerned is entitled to reinstatement with back wages.

## **Labour Courts**

The National Commission on Labour also suggested the establishment of standing Labour Courts entrusted with the functions of interpretation and enforcement of all labour laws, awards and agreements. These Courts are to deal broadly with disputes relating to matters in the Second Schedule of the Industrial Disputes.

Act, 1947.<sup>20</sup> Labour Courts are required to entertain proceedings instituted by the parties asking for the enforcement of their rights and to execute the same accordingly. Appeals over the decisions of the Labour Court "in certain clearly defined matters" may lie with the High Court.

### 3 Tripartite Bodies

The Commission commended the role of tripartite bodies in evolving uniform norms in the field of industrial relations in the country. According to the Commission, these bodies should continue to remain advisory in character, but their recommendations must be treated "as deserving every consideration." The Commission recommended taking of decisions by the Indian Labour Conference at two stages: (a) a preliminary but detailed discussion at the first stage, and (b) at the second stage, framing of final recommendations after taking into account the comments received on the conclusions at the preliminary stage. The Commission further recommended more frequent meetings of the Standing Labour Committee and those of the Indian Labour Conference less frequently but for longer duration. As regards workers' representatives at the ILC, the Commission favoured restricting representation only to those central organisations which have a membership of at least 10 per cent of the unionised labour force in the country. There should be a review every three years to accord representation to organisations on this basis.

The Commission further suggested designating a senior officer of the Ministry of Labour as Secretary of the Indian Labour Conference who should be assisted by adequate staff. His main function will be to project and meet the information needs of the Indian Labour Conference, Standing Labour Committee, and Industrial Committees and to coordinate the available information.

Industrial Committees, according to the Commission, should meet more often to examine specific issues connected with the industries concerned and should also test the applicability of the decisions of the Indian Labour Conference and Standing Labour Committee in respect of these industries.

The Commission's recommendations are still under examina-

20. See Chapter 20.

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tion by the Central Government and both the Central and State Governments have expressed their strong disapproval of the recommendations in respect of industrial relations. It is unlikely that, vague and equivocal as they are, the recommendations are going to influence the industrial relations policy of the government in any significant way.

## CHAPTER 13

### LABOUR-MANAGEMENT COOPERATION

It has been said in the beginning of Chapter 10 that the modern industrial relations' scene has two important aspects: (a) cooperation, and (b) conflict. Chapters 10, 11 and 12 were devoted to a discussion of the problems arising from industrial conflict. The present chapter discusses the problems of cooperation.

That cooperation between labour and capital is the basic requirement for the successful functioning of modern capitalist enterprises is a statement needing little further elucidation; this cooperation is available only at a minimal degree is also a statement that can hardly be controverted. Chamberlain calls this sort of relationship 'conjunction' i.e. a state of relationship under which the parties, instead of offering their best, offer the least in the absence of which the relationship will break. The workers attempt to produce only that much which can keep them in employment. Under the existing institutional arrangements, special efforts have to be made to induce them to put forth their best efforts for productive purposes.

In the case of self-employment, under which a person owns his own tools, premises, raw materials and also the final products, he always seeks to work at his best. Even where he does not own the tools i.e. capital and obtains them on hire, he still exerts his best. But the moment capital becomes separated and is treated as an independent factor of production, the problem of motivating the worker becomes acute. How to generate under the existing capitalist form of economic organisations, the energy, sincerity and

enthusiasm which the workers display when they work on their own account? It is the search for the answer to this question that has led to the acceptance, formation and implementation of many schemes for promoting cooperation between labour and management in almost all industrially advanced capitalist countries. What was assumed till now to exist automatically is sought to be promoted today deliberately and consciously. Such terms as "labour-management consultation", "labour-management cooperation" and "participation of labour in management" have become words of common parlance and no book on industrial relations is thought to be complete without a reference to them.

### Meaning of Labour-management Cooperation and its Goals

The term "labour-management cooperation" refers to the joint efforts of labour and capital to find out solutions and remedies of problems common to both. In contrast to collective bargaining, which involves of joint decision-making in the matters of admittedly divergent interests, cooperation represents joint decision making in matters of admittedly common interests. Thus, before such a cooperation can take place, each of the parties has to be convinced that in some defined areas, interests are in fact common; that by cooperation with the other in the decision-making process in this area, each would be promoting its own interests; and that by such cooperation, it will not become a tool of the other.

### As a Means of Increasing Productivity

It is said that the area of the most common mutual interests where labour and management may cooperate consciously to the advantage of both consists of promoting efficiency and productivity, eliminating wastes, reducing cost, and improving the quality of the product. In a word, the area of common interests lies in increasing the size of the cake so that each of the parties may have a larger piece as its share. Dividing the cake may be a source of conflict but increasing its size represents a common interest. But here again, a number of questions arise. What is the guarantee that labour will get its share of the increased size of the

cake? What will happen when increasing the size involves retrenchment, speed-up and increase in the work-load?

It is on such issues that many schemes of labour-management cooperation have foundered. If, however, methods satisfactory to the workers for sharing the increased productivity can be devised either on the basis of collective bargaining or legislation, labour may willingly cooperate with the management in promoting the efficiency of the enterprise. Thus, a satisfactory collective bargaining relationship is a condition precedent to the formulation of the schemes of cooperation. It is collective bargaining that sets the terms on which cooperation takes place in the field of common interests, guaranteeing each its proper share in the fruits of co-operation.

From what has been said here of cooperation as a joint decisions-making process, it is clear that it implies giving to workers and the unions a voice in the operation of the business enterprises. The field of decision-making which was reserved hitherto for the legal owners of business enterprises or their representatives is now either partially or wholly, thrown open to the workers also in order to enlist their cooperation to promote the economic health of the enterprise. Therefore, labour-management cooperation becomes a means to achieve higher productivity which is said to be a matter of common interest.

### As a Means of Promoting Industrial Democracy

Labour-management cooperation is also advocated as a means to promote industrial democracy. It is said that workers should have a voice in the administration of the enterprise to which they belong.<sup>1</sup> Industrial enterprises which furnish the material needs of the workers will also start giving non-material human satisfactions if workers acquire a say in the determination of the conditions

1. The expression "the enterprise to which they belong" sums up the paradox of the situation. If the expression "the enterprise which belongs to them" could be used instead, the need for ensuring a voice to the workers would not have arisen because the workers would automatically become the administrators of the enterprise. The crux of the problem is that the workers are asked to cooperate in promoting the efficiency and health of an enterprise which does not belong to them, and one should not be surprised if they raise a question, "What for?"

under which they work and live. This will lead to the achievement of industrial democracy which is a logical corollary of political democracy, and which is also essential for the preservation of the latter. Work under such conditions would become a source of satisfaction—both material and non-material. As political democracy is supported even though it may not be the most efficient way of organising the affairs of a community, industrial democracy is emphasised, though it may not necessarily lead to increasing the efficiency and productivity of the enterprise. Hence, labour-management cooperation is advocated to ensure industrial democracy for its own sake, irrespective of its influence, favourable or not, on the economic efficiency of the enterprise.

### **As a Means of Avoiding Conflict and Friction**

It is contended that a closer association between the workers and management leads gradually to the appreciation of the problems of one by the other and the development of an accommodative frame of mind. Through labour-management cooperation schemes, the strength, influence and the knowledge of the unions and the experience and knowledge of the workers can be channelised into better purposes rather than into undoing what the management does, as is often the case at present. The power won by labour from a reluctant employer is apt to be used more unscrupulously and with less constructive wisdom. On the other hand, a sharing of power with labour on a voluntary basis in recognition of the moral right of the worker to have it is likely to generate a responsive attitude.

The success of labour-management cooperation schemes can lead to the elimination of many sources of friction between workers and employers, and may be conducive to the promotion of industrial peace. It is claimed that labour-management cooperation reduces employees' resistance to changes in industrial methods, introduction of new products and work-reorganisation, etc.

Thus, there are three important objectives of the attempts at promoting labour-management cooperation: (a) increase in the efficiency and productivity of the enterprise; (b) creating and maintaining industrial democracy; and (c) preserving industrial peace. Though basically there is no fundamental conflict in the three goals mentioned here, occasionally, conflicts may arise because of the

divergent approaches of labour and management to the schemes of labour-management cooperation. Labour may be primarily interested in widening its area of control over managerial functions, whereas management may support labour-management cooperation primarily because it may lead to increase in efficiency and productivity. Hence, situations of conflict might arise in working out the implementation of labour-management cooperation schemes.

### **Traditional Forms of Control and Management of Enterprises Under Capitalism**

The significance of labour-management cooperation, which may vary from simple consultation to workers' participation in management, can best be realised by contrasting it with the traditional form of control and management of industrial enterprises. Under capitalism, the laws relating to private property vest the power of control and management in its owners or their representatives. The absolute right of the owners to control and manage property is restricted by law in exceptional cases where public interest is involved and that too to a very limited extent. The owners of business enterprises have been traditionally exercising the powers to manage their employees and to unilaterally decide all questions relating to their hiring and firing, promotion, demotion, transfer or lay-off; the owners have also been deciding the methods and techniques of production, the nature and quantum of products, fixation of prices, and all other matters in respect of the administration of the enterprise. The advent of trade unionism and the institution of collective bargaining has encroached upon these traditional rights and powers but the basic principle still persists.

### **Arguments for the Owners' Absolute Right to Manage**

The owners' absolute right to manage economic enterprises is justified on a number of grounds including the following:

(1) The golden rule of capitalism that "risk and control go together" provides the most important justification. According to this rule, the owners of business enterprises subject their capital resources to unforeseen risks; the business venture may succeed and bring profits or it may fail causing bankruptcy. Therefore, the

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owners should have full freedom to manage their enterprises unhindered by any outside control in order that the risk may be minimised and success assured. Any interference with their right is likely to cause dislocation.

(2) The maintenance and development of industrial efficiency demands that the managers should be able to take quick decision in the ever-changing market conditions. Any delay which may be entailed because of a long cumbersome consultative procedure in decision making may lead to serious economic losses. Therefore, the owners of enterprises should have the necessary power to make quick adaptations and take quick decisions as and when so demanded. Thus, the exercise of the absolute power by the owners is thought to be a necessary condition for the maintenance of the economic health of the enterprise. It is said that the management of a large-scale business enterprise is necessarily authoritarian in character which does not lend itself to democratic control. There has to be a hierarchical organisation with the decision-making power vesting at the top in the selected few, and compliance and obedience from the bottom.

(3) Finally, it is said that management of industrial enterprises today has become a highly skilled and technical job. The skill of managing enterprises comes only through long experience and training which, under the present social system, only a few can afford. Therefore, the owners of business enterprises or their legal representatives, who are in the best position to receive that training and pick-up that experience, should possess full freedom to control and manage their property. It will not be in the interest of economic efficiency if persons without training and experience are given the right to share the decision-making power.

It is on the basis of the foregoing arguments that the absolute power of the owners of business enterprises is exercised and justified. Essentially, the power to manage flows from the right to own property. Therefore, management's rights are basically property-rights. However, gradually, the workers and the trade unions have not only challenged these management rights but have also succeeded in restricting them and in participating in the managerial decisions. The managements have been forced to share one right after another with the workers, but this is a forced sharing rather than a voluntary process.

## Arguments against the Owners' Absolute Right to Manage

Workers and unions have argued that the success or failure of a business enterprise is too closely linked with their own fate to be left under the absolute control of the owners. In the event of its failure, the owner may lose his capital only, which may or may not mean his starvation, but the workers lose their jobs, their bread and their hard-learned experience and skill. Therefore, they ask, "Who is more interested in the success of the enterprise, the workers or the owners?" The workers accept that managing an enterprise is a skilled job but the owner is not automatically a skilled manager. In the larger industrial undertakings of today, the real managers are not the owners. There is an industrial bureaucracy consisting of experts of various kinds which manages the undertakings today. If the owners, by virtue of their property rights, have the power to control this bureaucracy, the workers, by virtue of their right to jobs, should also have a voice in exercising this control.

Another line of argument advanced by workers and their unions is that the right to manage an industrial enterprise does not imply the right to manage men also whose cooperation is essential for the success of an enterprise. They take the argument to a higher ethical plane and contend that control and management of men must be based on their consent. The unilateral determination of the terms and conditions of employment by the owners means an imposition. Workers are human beings and as such they should have the right to participate in the determination of the terms and conditions of employment. Thus, there is no case for the owner's absolute right to manage his enterprise in the interests of his profits only. If the goals of the management are so modified as to include the interests of the workers, the case for workers' participation in the decision-making process is further strengthened.

Be as it may, management's rights are increasingly challenged and shared by the workers and their representatives. Many of the managements have also come to realise that it is much better to take voluntary initiative to enlist workers' cooperation rather than wait for being forced by them.

There is a growing realisation in management circles, workers and trade unions, and governments that it would be in the interest

of all concerned if the two warring camps could give up their war tactics and join hands together in solving common problems. However, to Marxists and others believing in the class nature of the capitalist society and in the ultimate overthrow of capitalism for the abolition of wage-slavery, this trend appears to be a symptom of class collaboration designed to emasculate the working class of its militancy.

### **Different Degrees and Forms of Labour-Management Cooperation**

Labour-management cooperation may take various forms and may be of different degrees. To mention a few, labour-management cooperation may take any of the following forms:

- (1) Information sharing;
- (2) Problem sharing;
- (3) Joint consultation; and
- (4) Workers' participation in management.

#### **(1) *Information sharing***

Under this type of cooperation, the employer agrees or undertakes to keep the employees informed about business conditions and the general prospects of the company and about changes in the methods of production before they are put into effect. This practice of keeping the employees and their union informed of the economic position of the enterprise help the union in formulating its policies and the workers in their attitude-formation. It is quite legitimate to infer that, once the workers receive prior information of the changes in the methods of production and the economic difficulties of the enterprise, they would put forward their own ideas and suggestions which could receive a due consideration by the employer.

#### **(2) *Problem sharing***

The second form of labour-management cooperation may relate to problem sharing. An employer faced with some problems may consult the workers and their union and seek their help in solving them. This sort of cooperation is specific and related to particular issues. However, the experience thus gained may result in a more formalised and regular structuring of consultation and

advice. The relationship between the Amalgamated Clothing Workers of America and the clothing factories is an illustration of this type of experience. When some clothing manufacturers finding themselves in economic difficulties called for the union cooperation, the union and the various managements jointly succeeded in resolving the economic difficulties and thereby laid the foundation of a more widespread cooperation between the union and the clothing industry.

### (3) *Joint Consultation*

Whereas the first two forms of labour-management cooperation may be of a temporary nature designed to get out of occasional difficulties, there may be formal and regular consultation between a management and the workers represented by their union on all or some common issues as decided upon beforehand. It means consultation of the workers by the management before any decisions are made so that the workers' point of view could also be taken into account by the decision-making authority. This consultation also provides the management an occasion to explain its own aims and problems. The management retains its prerogative to manage i.e. the exclusive right to take decisions. It also thereby has the clear and undivided responsibility for the results of its actions. When consulted, the workers and their unions may offer their suggestions and give their view-points, but cannot insist that their view-points be accepted. Consultation in this form does not imply joint decision-making. The acceptance by the management of the workers' ideas and claims depends entirely on their merits as understood by the management.

However, it should be mentioned here that in the process of consultation, the workers and their union acquire a definite status. It will be a rash and imprudent management which will summarily reject the opinions and view-points presented by strong and well-organised unions. What appears to be a mere consultation may acquire a binding character in course of time.

### (4) *Workers' participation in management*

The final form of labour-management cooperation may provide for workers' participation in management. Under this form, the process of decision making becomes really joint and bipartite.

Both the union and the management have a say in decision making and they also undertake responsibilities for the results of their action.

Workers' participation in management, in many cases, may imply a representation of the workers on the Board of Directors of a company or it may simply mean the establishment of joint councils consisting of the representatives of the workers and the management. These councils are vested with the power to take final decisions on matters entrusted to them either on the basis of bargaining or legislation.

The workers' participation in management as a form of labour-management cooperation is quite different from the participation of the union through collective bargaining in the managerial decision making process. The emergence of collective bargaining has enabled workers and unions to share the decision-making power of the management in many areas of the administration of an enterprise. Wages, working conditions, hours of work, hiring, dismissal, promotion, demotion, lay-off, retrenchment, job evaluation, fringe benefits, health, safety and welfare, and many other related matters are being decided on the basis of collective bargaining today. Management's prerogatives in these areas no longer exist and what was formerly decided unilaterally by the management is now the subject matter of a bipartite decision. Further, whatever management's prerogatives exist have an uncertain future. As the scope of collective bargaining widens, management's prerogatives shrink.

But workers' participation in management as a form of labour-management cooperation is different from participation on the basis of collective bargaining, not only because the subject matter of the former is different from that of the latter, but also because of the spirit which lies behind labour-management cooperation. In labour-management cooperation, the guiding motive is the improvement of efficiency and production, generally speaking, with a spirit of cordiality and good will. The sanction behind participation through collective bargaining is the relative coercive powers of the parties concerned; whereas the sanction behind workers' participation as a form of labour-management cooperation is the spirit of goodwill and reason.

The foregoing discussion gives an indication of the variety of forms and extent of labour-management cooperation. As co-

operation is a voluntary movement, its forms depend upon the extent of the willingness to cooperate amongst the parties concerned and the needs of the particular industrial establishments, industries and the nation as a whole at a particular time. Co-operation cannot be exacted under legislative powers and, therefore, it cannot be put into straight, uniform and standardised jackets, though attempts have been made to develop cooperation on the basis of legislation. Every establishment, every industry and every nation chooses its own form of labour-management cooperation. Hence, experiments in the field of labour-management cooperation differ from country to country. Even within the same country, its forms and levels are not the same for all plants or industries.

### **Labour-Management Cooperation in Great Britain**

Apart from the occasional and exceptional participation of workers in management in the form of profit-sharing and co-partnership, where workers elect some members on the Board of Directors of a company,<sup>2</sup> the most common form of labour-management cooperation in Great Britain is joint consultation. Joint consultation in Great Britain has been sought to be developed as a primarily voluntary movement, but it has also been sought to be fostered by law in the nationalised industries.

### **Joint Consultation**

By the beginning of the twentieth century, joint consultation in the form of advisory committees of workers' representatives was developed by many employers. These employers had either an unusual interest in the welfare of the workers or an interest in developing a system of workers' representation as an alternative to trade unionism. Under these conditions, advisory committees and joint consultation came to be viewed with distrust and suspicion by the unions. However, in some industries such as the railways and government departments, where the unions won the first recognition, it was only for the purpose of making representation and consultation on behalf of their members but without any right to

2. The typical example being South Metropolitan Gas Company.

enter into agreements over wages and conditions of employment.

## The First World War

The joint consultation movement received a great impetus during the First World War. The exigencies of the war causing shortage of labour, because of the pressure of military recruitment and expansion of industries and to magnifying the importance of industrial peace, led to the widespread use of joint consultation both at the plant and the national levels. Managers, who found themselves unable to carry out their plans without the cooperation of their employees, had to make the best use of the available labour force. They were forced to consult and listen to the unions, and the Shop Steward Movement became widespread. Joint Committees were set up for frequent consultation between workers and managers. Thus, the Shop Steward Movement and the joint committees succeeded in establishing a limited form of workshop democracy. At the government level, ministers and senior department officers had to enter into regular consultation with trade union leaders over a wide variety of industrial problems.

The joint consultation schemes proved their usefulness both in maintaining industrial peace and improving productivity. These war-time experiences indicated that joint consultation could be of considerable value even during peace times. The present concept of joint consultation found its first expression in the Whitley Committee's Report.

## Whitley Councils

The Committee on the Relations between Employers and Employees popularly known as the Whitley Committee, which submitted five reports during 1917 and 1918, recommended *inter alia* the formation of Joint Industrial Councils in well-organised industries, District Councils at the district level, and Works Committees in industrial establishments consisting of representatives of employers and employees.

The Committee stated, "...a permanent improvement in the relations between employers and employed must be founded upon something other than a cash basis. What is wanted is that the

work-people should have a greater opportunity of participating in the discussion about the adjustment of those parts of industry by which they are most affected... We venture to hope that representative men in each industry, with pride in their calling and care of its place as a contributor to the national well-being, will come together in the manner here suggested, and apply themselves to promoting industrial harmony and efficiency and removing the obstacles that have hitherto stood in the way."<sup>3</sup> Thus, the objective behind the establishment of these Councils would be "regular consideration of matters affecting the progress and well-being of the trade from the point of view of all those engaged in it, so far as this is consistent with general interests of the community."<sup>4</sup>

The Joint Industrial Councils were to deal with such questions as better utilisation of the practical knowledge and experience of the workers, settlement of the general principles governing the conditions of employment, means of ensuring to the workers the greatest possible security of earnings and employment, methods of fixing and adjusting earnings, piece-work prices, technical education and training, industrial research, improvement of processes and proposed legislation affecting the industry. The District Councils were to deal with similar questions but their main role was to be in the nature of supplementing the industry-wide decisions taking into account the special circumstances of particular districts. The Works Committees were to establish and maintain a system of co-operation in the workshop matters and deal with questions closely affecting the daily life and comfort in the business, its success, and improvement of efficiency, but they were not to interfere with "questions such as rates of wages and hours of work, which should be settled by the District or National agreement."

In view of the increasing popularity of the Whitley Councils in the initial periods and frequent assistance sought by employers and workers' organisations, the Ministry of Labour drew up a Model Constitution and Functions of a Joint Industrial Council, an extract from which, is produced below.

3. U.K. *Industrial Relations Handbook*, 1961, p. 23.

4. *Ibid.*

## Model Constitution and Functions of a Joint Industrial Council

### A. Constitution

1. *Membership.* The Council shall consist of...members appointed as to one half by Associations of Employers and as to the other half by Trade Unions.
2. *Reappointment.* The representatives of the said Associations and Unions shall retire annually, and shall be eligible for reappointment by their respective Associations and Unions. Casual vacancies should be filled by the Association concerned, which shall appoint a member to sit until the end of the current year.
3. *Committees.* The Council may delegate special powers to any Committee it appoints. The Council shall appoint an Executive Committee and may appoint such other Standing or Sectional Committees as may be necessary. It shall also have the power to appoint other Committees for special purposes. The Reports of all Committees shall be submitted to the Council for confirmation, except where special powers have been delegated to a Committee.
4. *Coopted members.* The Council have the power of appointing on Committees or allowing Committees to coopt such persons of special knowledge not being members of the Council as may serve the special purposes of the Council, provided that so far as the Executive Committee is concerned:
  - (a) the two sides of the Council shall be equally represented, and
  - (b) any appointed or coopted members shall serve only in a consultative capacity.

*Note: It is desirable to take power to appoint representatives of scientific, technical and commercial Associations upon Committees and sub-Committees of the Council, and the above clause would give this power.*

5. *Officers.* The Officers shall consist of a Chairman or Chairmen, a Vice-Chairman, a Treasurer, and a Secretary or Secretaries.

*Note: All honorary Officers shall be elected by the Council for a term of one year.*

6. *Meetings of the Council.* The ordinary meeting of the Council

shall be held as often as necessary and not less than once a quarter. The meeting in the month of...shall be the annual meeting. A special meeting of the Council shall be called within...days on the receipt of a requisition from any of the constituent Associations or from the Executive Committee. The matters to be discussed at such meetings shall be stated upon the notice summoning the meeting.

7. *Voting.* The voting both in Council and in Committees shall be by show of hands or otherwise as the Council may determine. No resolution shall be regarded as carried unless it has been approved by a majority of the members present on each side of the Council.
8. *Quorum.* The quorum shall be...members on each side of the Council.
9. *Finance.* The expenses of the Council shall be met by the Associations and Trade Unions represented.

#### *B. Functions*

1. To secure the largest possible measure of joint action between employers and workpeople for the development of the industry, a part of national life and for the improvement of the conditions of all engaged in that industry.

It will be open to the Council to take any action that falls within the scope of this general definition. Among its more specific objects will be the following:

*Note : No hard and fast policy is suggested as to what should constitute the functions of an Industrial Council. This is a question which the employers and workpeople in each industry must settle for themselves.*

2. Regular consideration of wages, hours and working conditions in the industry as a whole.
3. The consideration of measures for regularising production and employment.
4. The consideration of the existing machinery for the settlement of differences between different parties and sections in the industry, and the establishment of machinery for this purpose where it does not already exist, with the object of securing the speedy settlement of difficulties.

5. The collection of statistics and information on matters appertaining to the industry.
6. The encouragement of the study of processes and design and of research, with a view to perfecting the products of the industry.
7. The provision of facilities for the full consideration and utilisation of inventions and any improvement in machinery or method, and for the adequate safeguarding of the rights of the designers of such improvements, and to secure that such improvement in method or invention shall give to each party an equitable share of the benefits financially or otherwise arising therefrom.
8. Inquiries into special problems of the industry, including the comparative study of organisation and methods of the industry in this and other countries, and where desirable the publication of reports.
9. The improvement of the health conditions obtaining in the industry, and the provision of special treatment where necessary to workers in the industry.
10. The supervision of entry into and training for the industry, and cooperation with the educational authorities in arranging education in all its branches for the industry.
11. The issue to the Press of authoritative statements upon matters affecting the industry of general interest to the community.
12. Representation of the needs and opinions of the industry to the Government, Government Departments and the other authorities.
13. The consideration of any other matters that may be referred to it by the Government or any Government Department.
14. The consideration of the proposals for District Councils and Works Committees put forward in the Whitley Report, having regard in each case to any such organisations as may already be in existence.

*Note: The following have also been included among the functions in some of the provisional constitutions which have been brought to the notice of the Ministry of Labour.*

- (i) The consideration of measures for securing the inclusion of all employers and workpeople in their respective associations.

- (ii) The arrangement of lectures and the holding of conferences on subjects of general interest to the industry.
- (iii) Cooperation with Joint Industrial Councils for other industries to deal with problems of common interest.

Although, in the initial stages, a great deal of enthusiasm was displayed in the formation of Whitley Councils, people were very soon disillusioned with them. To many managements, the Councils were too revolutionary and to many unions they were too conservative. Formation of these Councils on the lines laid down by the Whitley Committee was not undertaken in the more important industries "where recognition of trade unions was most completely established and a procedure of collective bargaining already well-developed."<sup>5</sup> The disappearance of the exigencies of the war and the economic depression of 1921 did not create any propitious climate for their functioning. As a result many Whitley Councils disappeared during the years following. The number of Joint Industrial Councils which was 73 in 1921 came down to 47 in 1926 and it dropped to 45 in 1938.

### Inter-War Period

The economic and political climate in Great Britain during the inter-war period was highly uncongenial to the growth of the ideas of joint consultation. Economic stagnation and decline and widespread unemployment led to the strengthening of socialist ideas among workers and trade unions. The labour movement veered more and more towards nationalisation, centralised planning and control and political action as remedies for the ills of the working class. Class conflict deepened and, naturally, joint consultation was buried deep to revive again only during the Second World War.

As in the case of the First World War, the Second World War imposed a common purpose throughout the nation and the workers and the employers lent all efforts to cooperate together to win the war.

### The Second World War

The establishment of the coalition government with the Labour

5. U.K. *Industrial Relations Handbook*, 1961, p. 23.

Party as one of its partners further facilitated the growth of joint consultative ideas. A National Joint Advisory Committee was attached to the Ministry of Labour and similar Advisory Committees were created for other departments. Joint Production Committees were set up everywhere and by 1943 more than 4000 such Committees came into existence. In the mining industry, Pit Production Committees were set up.

What was the contribution of these committees to the war production? The answer to the question cannot be definitive. A survey made by the International Labour Office came to conclude that no definite conclusions could be drawn from these experiences. However, it can be said that many committees could be generally regarded as successful and almost as many as unsuccessful; that the workers made a number of useful suggestions through these committees; that a useful channel of communication was established; and that a number of workers gained some experience of problems of management.

### Post-War Developments

The post-Second World War climate of Great Britain, unlike the post-First World War climate, proved favourable to the growth of the ideas of joint consultation. The pressure of full employment and the election in 1945 of a Labour Government, along with the spread of the ideas of Elton Mayo, made for a continued interest in joint consultation. The British Trades Union Congress continued to be in favour of developing joint consultation because of its confidence in its added strength and influence. The employers also continued to show a lively interest because of the problems of labour supply and labour utilisation.

In practice, the Joint Industrial Councils present considerable variety in structure, in the degree of authority within the industry and in the nature and extent of their activities. Some of the Councils are small in size having a membership of even less than 15, others are quite large with more than 100 members. Wide variations also exist in the frequency of meetings. Besides, whereas some of the District Councils enjoy a certain amount of local autonomy, majority of them are subject to the authority of the National Councils.

In general, the Joint Industrial Councils have contributed much in the settlement of industrial disputes and avoidance of work-stoppages. However, the areas of activities of the Councils have varied widely. Whereas some Joint Industrial Councils deal only with the negotiation of wages and conditions of employment, most others deal with a wide range of subjects. On the other hand, there are Councils which do not deal with the question of wages. Some other matters commonly dealt with by these Councils include: unemployment, research and collection of statistics, education, training and apprenticeship, welfare, health and safety, workmen's compensation and transport facilities. In many cases, the Councils engage in consultation with the Government Departments concerned. Officers of the Ministry of Labour attend the meetings of a considerable number of Joint Industrial Councils and assist them in a variety of ways.

### **Joint Consultation Today**

#### *(A) Private sector*

No comprehensive assessment has been made of the extent of formal joint consultation in industries in the private sector in Great Britain. Investigations made so far have been directed more towards discovering the factors which make for successful consultation rather than finding out its extent. But it is highly probable that in spite of a good deal of informal consultation, many of the formal joint consultation schemes set up during the last world war have disappeared. As far as formal arrangements are concerned, it can be said that it is more common in the manufacturing industries than in the other branches of the economy.

In the manufacturing industry itself, the engineering industry stands as an outstanding example. The arrangements made in 1942 in an agreement between the employers of the engineering industry and the union continues. The agreement lays down the constitution for the machinery of joint consultation in the engineering industry i.e. the Joint Production, Consultative and Advisory Committees. The main function of these committees is "to consult and advise on matters relating to production and increase efficiency for this purpose in order that the maximum output may be obtained." The joint committees in the private sector are purely

consultative and have no executive functions.

*(B) Public sector*

Joint consultation in the public sector can be discussed under two heads : (i) joint consultation in the civil service, and (ii) joint consultation in the nationalised industries and services.

*Joint consultation in the civil service.* Joint consultation in the civil service is one of the outstanding survivals from amongst the many Whitley Councils formed after the First World War. Taking the industrial and non-industrial sections of civil service together, nearly one million employees are covered by joint consultative machineries. In the local government services also the consultative machinery covers about one and a half million employees.

*Joint consultation in the nationalised industries and services.* The various Acts of nationalisation have charged the authorities created for the management of nationalised industries to establish consultative machineries whenever satisfied that such machineries do not exist. An example can be had from the Transport Act, 1947 which lays down :

...except so far as...they...are satisfied that adequate machinery exists for achieving the purposes of this sub-section, to seek consultation with any organisation appearing to...(them)...and that organisation of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for—

- (a) the establishment by negotiation of terms and conditions of employment...;
- (b) the promotion and encouragement of measures affecting the safety, health and welfare of persons employed by (them)...and the discussion of other matters of mutual interest to them...including efficiency in the operation of... (their) services.

These words are to be found with slight variations in other nationalisation Acts also. Besides, the formal machineries established for joint consultation in the nationalised industries, the public authorities in charge of these industries have always included in their membership an expert in trade union affairs. These experts are generally ex-trade union officers. Thus, it can be concluded

that consultation is more formalised in the nationalised industries than elsewhere in Great Britain.

On the basis of this brief description of the operation of joint consultation in Great Britain, it will be presumptuous to come to definite conclusions as regards its success or failure. However, on the basis of other detailed studies made elsewhere, it can be concluded that, as in other walks of life, joint consultation also has to its credit, a limited measure of success as well as failure. To quote T. E. Chester and G. Foresight, "In spite of general approval accorded it, there can be little doubt that it has failed to fulfil the high hopes and expectation of its keenest advocates."<sup>6</sup> Flanders and Clegg have come to a similar conclusion when they say, "By and large, however, despite some successes and interesting experiments, local consultation has not satisfied the expectations of either managers or the workers."<sup>7</sup> They further conclude that "the two most important lessons of the history of joint consultation in the U.K. are: (1) that the demand for it is widespread only during periods of full employment; and (2) that consultation is most successful in time of war."<sup>8</sup>

### Labour-Management Cooperation in India

Labour-management cooperation in India is primarily a government sponsored movement. As early as 1947, the Industrial Truce Resolution adopted at the Industries Conference held at Delhi, recommended *inter alia* the formation of Unit Production Committees in industrial establishments for promoting the efficiency of workers and improving production. The Central Government, under the Industrial Policy Resolution of the 6th April, 1948, also professed the setting up of bipartite Production Committees consisting of representatives of employers and workers. After a further discussion of the matter at the first meeting of the Central Advisory Committee on Labour held at Lucknow in November, 1948, the Central Government prepared a model constitution

6. T.E. Chester and Gardner Foresight, "Concept of Joint Consultation in Great Britain", *Indian Journal of Labour Economics*, Vol. II, Nos. 2-3, July-October 1959, pp. 141-142

7. Allan Flanders and H.A. Clegg, *op. cit.*, p. 354.

8. *Ibid.*

for the establishment of Unit Production Committees as well as for enabling the existing Works Committees to function as Production Committees. Under the model constitution, the functions of these Committees were to consult and advise on matters relating to production problems insofar as they pertained to specific problems of production in which labour had a direct interest.

In particular, the functions of the Committee included : (a) a better upkeep and care of machinery, tools instruments, etc.; (b) efficient use of the maximum number of production hours; (c) elimination of defective work and waste; and (d) efficient use of safety precautions and devices.

The Committees were to consist of representatives of management, and representatives of workers who were not to be less than those of the management. The representatives of the workers were to be elected from amongst the workers employed in the undertaking or factory. These Committees were prohibited from dealing with the problems of planning, development and production in their wider sense and functions which were purely managerial. They were further precluded from dealing with such issues as were normally taken by the trade unions.

### Joint Management Councils

Nothing very definite came out of the recommendations referred to above and the need for the establishment of such Committees continued to be felt. It was also realised that a very limited association of workers with the management of industrial undertakings purely from the point of view of increasing production, would not enthuse the workers. Thus, the Second Five Year Plan recommended the setting up, in the first instance, of Councils of Management consisting of representatives of management, technicians and workers in the larger industrial undertakings. These Councils of Management were supposed to enjoy wider functions and powers than those of the Unit Production Committees.

In pursuance of the recommendations of the Second Five Year Plan, the Government of India sent abroad a study group to study the extent and methods of workers' participation in vogue in Great Britain, Sweden, France, Belgium, Germany and Yugoslavia. The Report of the study group was considered by the Indian Labour

Conference at its 15th session held in 1957. The Conference, while accepting the recommendations of the study group, set up a sub-committee of representatives of employers, workers and government to work out the details of a scheme of workers' participation in management. The sub-committee laid down the following criteria for the selection of undertakings for introducing schemes of workers' participation in management:

- (a) The undertaking should have a well-established, strong trade union functioning;
- (b) There should be a readiness with the parties viz. employer, workers and the union, to try out the experiment in a spirit of willing cooperation;
- (c) The size of the undertaking (in terms of employment) should be at least 500 workers;
- (d) The employer in the private sector should be a member of one or the other leading employers' organisation, so should the trade union be related to one of the central federations; and
- (e) The undertaking should have had a fair record of industrial relations.

In order to work out further details a seminar on labour management cooperation was held at New Delhi in January 31, and February 1, 1958. The seminar made recommendations with regard to:

- (a) size of the Joint Council;
- (b) methods of selection of workers' and management's representatives;
- (c) office-bearers of Joint Councils;
- (d) constitution of sub-committees;
- (e) schedule for the meetings of Joint Councils;
- (f) minimum qualifications pertaining to education, etc.;
- (g) liaison between Joint Councils and Ministry of Labour and Employment;
- (h) guidance from panels of experts;
- (i) training programmes in units experimenting with workers' participation in management;
- (j) dissemination of informations to workers;
- (k) informal meetings;

- (l) relationship between Joint Councils and Works Committees; and
- (m) responsibilities of the Council.

Out of the deliberations of the seminar also emerged a draft of a model agreement regarding establishment of Councils of Management. The model agreement is intended to guide management and unions seeking to set up Councils of Management.

### Composition and Functions of Joint Councils of Management

The recommendations of the seminar on Labour Management Cooperation and the Draft Model Agreement give a complete procedural picture of the Joint Councils of Management.

#### *Composition*

Under the recommendations of the seminar, the Joint Councils, to be effective and manageable, are to consist of equal number of representatives of management and employees not exceeding twelve in all, but not less than six in small undertakings. The employees' representatives are to be nominated by a representative union, if any, where there is a law providing for the registration of the representative union. In case there are no representative unions but there is only one union well-established, that union should nominate employees' representatives. Where there are two or more well-established and effective unions, the Joint Councils will be formed when the unions themselves agree as to the manner in which representation should be given to employees. The trade unions, if they so feel, can nominate non-employee members to the extent of not more than 25% of their quota. However, if the employers have no objection, the number of such members can be raised to two.

#### *Functions*

The functions of the Joint Management Councils are laid down in the Draft Model Agreement. Its preamble stresses the appreciation of the fact that an increasing measure of association of employees with the management would be desirable and would help in: (a) promoting increased productivity for the general benefit of the enterprise, the employees and the country; (b) giving

employees a better understanding of their roles and their importance in the working of the industry and in the process of production; and (c) satisfying the urge for self-expression.

Section 4 of the agreement lays down that it would be the endeavour of the Councils: (i) to improve the working and living conditions of the employees, (ii) to improve productivity, (iii) to encourage suggestions from the employees, (iv) to assist in the administration of laws and agreements, (v) to serve generally as an authentic channel of communication between the management and the employees, and (vi) to create in the employees a live sense of participation.

So far as the specific status and functions of the Councils are concerned, they are consultative, information-sharing and administrative.

*Consultative functions.* The Councils should be consulted by the management on matters like: (i) general administration of standing orders and their amendments, when needed; (ii) introduction of new methods of production and manufacture involving re-employment of men and machinery; and (iii) closure, reduction in or cessation of operations.

*Information-receiving and suggestion-making functions.* The Councils would also have the right to receive information, discuss and give suggestions regarding the following matters:

- (i) general economic situation in the concern;
- (ii) organisation and general running of the undertaking;
- (iii) the state of the market, production and sales programme;
- (iv) circumstances affecting the economic position of the undertaking;
- (v) methods of manufacture and work;
- (vi) the annual balance sheet and profit and loss statement and connected documents and explanation;
- (vii) long term plans for expansion, redeployment, etc.; and
- (viii) such other matters as may be agreed to.

*Administrative functions.* The Councils would be entrusted with responsibility in respect of the following:

- (i) administration of welfare measures;
- (ii) supervision of safety measures;
- (iii) operation of vocational training and apprenticeship schemes;

- ✓(iv) preparation of schedules of working hours and breaks and of holidays;
- ✓(v) payment of rewards for valuable suggestions received from employees; and
- ✓(vi) any other matter as may be agreed to by the Joint Council.

In order to maintain a clear-cut distinction and avoid overlapping and confusion between the roles of the trade union and those of the Councils, the Draft Agreement provides that all matters such as wages, bonus, and allowances, which are subjects for collective bargaining, be excluded from the scope of the Councils. Individual grievances are also excluded. In short, creation of new rights as between workers and management is outside the jurisdiction of these Councils.

The second national seminar held in 1960, after reviewing the working of the Joint Management Councils for two years of their existence, reiterated their usefulness. The Third Five Year Plan also expected a good deal from these Councils and considered workers' participation in management essential for "the peaceful evolution of the economic system on a democratic basis". The Plan further hoped that such participation would throw up, in course of time, "management cadres out of the working class itself," and would help "to promote social mobility which is an important ingredient of a socialist system." The Plan, therefore, recommended the establishment of Joint Management Councils in all undertakings found suitable for the purpose so that the scheme might ultimately become a normal feature of the industrial system. The Indian Labour Conference also adopted resolutions from time to time to encourage the formation of these Councils.

In order to facilitate the implementation of the policy statements, the Government of India made some promotional efforts also. Thus, the Government of India made arrangements to draw up a panel of names from the organisations of employers and workers at various centres with a view to advising Joint Management Councils in the event of difficulties. Besides, it also set up a tripartite committee on labour-management cooperation to advise on all matters connected with the implementation of the scheme. A special cell for the purpose was set up in the Ministry of Labour and Employment. Many State Governments, on their part, entrusted

ted the promotion of the scheme to special officers. Gradually, Joint Management Councils came to be set up in both public and private sectors. An idea of the number of these Councils functioning in the country from 1958 to 1970 can be had from Table 23.

Table 23 shows that there had been a gradual increase, although very moderate, in the number of Joint Management Councils till 1966, but since then the number has recorded a decline. This is true both of the public and private sectors. However, if one were to take into account the number of undertakings in which JMCs could be set up as per recommendations of the national seminars, Five Year Plans and the Indian Labour Conference, one would find that only a very small percentage of the units could witness the functioning of these Councils.

A review report on the working of Joint Management Councils

TABLE 23

Number of Joint Management Councils Functioning in India (1958-1970)

<i>Year</i>	<i>No. in public sector</i>	<i>No. in private sector</i>	<i>Total</i>
1958	7	16	23
1959	6	16	22
1960	5	23	28
1961	11	18	29
1962	15	31	46
1963	23	53	76
1964	33	58	91
1965	34	65	99
1966	43	97	140
1967	47	85	132
1968	46	84	130
1969	31	53	84
1970	30	53	83

*Source :* Statement attached to a reply to a question in the Rajya Sabha by the Deputy Minister of Labour on June 4, 1971.

for 1967 reveals that in most cases the size of the Councils varied between 6 and 12 members—half being management's representatives and the remaining half being workers' representatives. Only in a few exceptional cases, the number of workers' representatives exceeded that of the employers' representatives. The management's representatives were invariably nominated by the management and the workers' representatives by the unions concerned, but in some cases, the management nominated the workers' representatives also.

In keeping with the provisions of the model constitution, the Councils performed consultative, information-sharing and administrative functions, but the subject matters in all these fields widely varied as amongst different Councils. Some of the topics discussed by many of them included: production and productivity, minimising waste, *gherao*, welfare measures, blood donation, family planning, absenteeism, quality control, etc. In some cases, questions of safety, canteen, house allotment, holidays, etc. were also discussed. While the deliberations of many JMCs were confined to the topics listed in the model agreement, others discussed many other topics depending on the mutual consent of the parties concerned. A notable feature of the practice is that in most cases JMCs have been formed after written collective agreements between the parties.

### Reasons for a Partial Success

A glance at the number of undertakings having Joint Management Councils, available reports on their working, and pronouncements made by the employers and trade union leaders here and there will clearly show that these Councils, contrary to the expectations of the promoters of the scheme, have not made much headway. There was a great fanfare, show and publicity when JMCs were set up in the initial periods. However, as time passed, the scheme could not receive a willing acceptance even by those who had supported it earlier. The National Commission on Labour in its report of 1969 also came to the conclusion "...the fact remains that the JMCs have not been a resounding success at any place either from the point of view of the employers or labour. If they had been, one or the other party would have

worked for popularising it further.”<sup>9</sup>

Apart from the general handicaps underlying any such scheme of labour-management cooperation in the country to be discussed later in this chapter, there are some particular obstacles in the adoption of JMCs and their smooth functioning. Some of the specific handicaps are listed below.

- (1) Although representatives of the central organisations of employers and workers supported the scheme at national conferences and committees, they have shown inadequate interest in making their affiliates enthusiastic about it.<sup>10</sup>
- (2) Employers already having an effective system of consultation in their establishments find a Joint Management Council in its present form superfluous.
- (3) Many employers and trade unions are averse to having a multiplicity of joint bodies.
- (4) In undertakings characterised by uncordial industrial relations, and absence of works-committees or other joint bodies, grievance procedure or a recognised union, it is futile to expect the formation or smooth functioning of JMCs.
- (5) Many trade union leaders think that JMCs divert the attention of workers from other important issues such as wages, bonus and allowances, etc. and thus they are not enthusiastic about the success of the scheme.

It is rather difficult to predict with any amount of precision the future of JMCs in India. The National Commission on Labour is, however, of the view that “when the system of union recognition becomes an accepted practice, both managements and unions will themselves gravitate towards greater cooperation, in areas they consider to be of mutual advantage and set up a JMC.”<sup>11</sup> There appears to be some force in the prediction of the National Commission on Labour that the system of compulsory recognition of trade unions will eventually accelerate the process of collective

9. Govt. of India, *Report of the National Commission on Labour*, 1969. p. 345, par. 24.14.

10. *Ibid.*, par. 24.13.

11. *Ibid.*, par. 24.15.

11/6/20

bargaining, and when collective bargaining is firmly established, the schemes of labour-management cooperation will have opportunities to succeed.

### Joint Councils in Government Service

A proposal to set up a type of machinery on the pattern of Whitley Councils for Government Departments was recommended by the Second Pay Commission which also recommended provision for compulsory arbitration.<sup>12</sup> After accepting the recommendations in principle, the Government of India took action to set up a machinery for joint consultation and arbitration in consultation with the representatives of the employees. The object of the scheme was "promoting harmonious relations and for securing the greatest measure of cooperation between the government in its capacity as employer and the general body of its employees in matters of common concern and with the object further of increasing the efficiency of public service." The success of similar schemes in railways, posts and telegraphs and defence establishments also provided an impetus. A voluntary scheme was eventually drawn and put into operation in October 1966. The main features of the scheme are given below.

*Coverage.* The scheme covers all regular civil employees of the Central Government other than those: (a) in Classes I and II (except Central Secretariat Services and comparable services in the headquarter's organisation of the Government); (b) persons in industrial establishments employed mainly in managerial or administrative capacity; and (c) those who being employed in supervisory capacity draw salary in scales going beyond Rs. 575 per mensem, employees in Union Territories and Police Personnel.

*Structure.* The scheme provides for the formation of a National Council, Departmental Councils, Regional and Office Councils. Each Council consists of nominees of the government who form the official side, and representatives of the unions or associations of employees recognised for the purpose. Accordingly, the National Council came to be set up, which held its first meeting on December 5, 1966. Departmental Councils have been

12. Govt. of India, *Report of the Second Pay Commission, 1959*, p. 551.

established in almost all the Ministries and Departments. In some Ministries or Departments, Regional and Office Councils have also been formed.

*Functions.* The scope of the Councils include all matters relating to conditions of service and work, welfare of the employees, and improvement of efficiency and standards of work. However, so far as the questions of recruitment, promotion and discipline are concerned, consultation is to be confined to matters of general principles only. The schemes further provide for limited compulsory arbitration on pay and allowances, weekly hours of work, and leave of a class or grade of employees. The arbitration award is binding unless rejected by the Parliament.

The National Council deals with matters affecting Central Government employees generally and those relating to two or more Departments not grouped together in a single Departmental Council. A Departmental Council generally deals with such matters which affect the employees in the Department concerned. The National Council has so far taken decisions on such matters as leave travel concession, house rent and incidental allowance, merger of dearness allowance in basic pay, hospital leave, and reversion of pre-emergency working hours. Similarly, Departmental Councils have taken decisions on subjects of immediate concern to the employees in the Departments concerned.

It was only after two years of the existence of these Councils that a number of unions and associations of employees gave a call for a general strike in September 1968 on the Government's refusal to refer to arbitration the question of the need-based minimum wage and related issues, thinking that they were not arbitrable. In consequence, the Essential Services Maintenance Ordinance was promulgated on September 13, 1968 which declared Government Services as "essential services" and prohibited strikes in them. The Ordinance was replaced by an Act of the same name enacted late in the year. It appears today that the schemes of joint consultation in government services are going to meet the same fate as the scheme of Joint Management Councils in industrial undertakings. The real test of any such schemes lies in their capacity to solve the basic issues dividing the employer and the workers. It is here that the Councils tend to fail at crucial moments.

## Joint Councils in Railways, Posts and Telegraphs, and Defence Establishments

Joint consultative machineries combining in them functions of "cooperation, consultation, discussion and negotiation" have been in operation in Indian Railways, Posts and Telegraphs and Defence establishments even prior to the establishment of Joint Councils in pursuance of the recommendations of the Second Pay Commission. In practice, however, the main function of the joint machineries in these industries has been that of negotiating for resolving differences or disputes.

*Railways.* In the Indian Railways, a Permanent Negotiating Machinery (PNM) was set up in 1952 with the consent of both the All-India Railwaymen's Federation and the Indian National Railway Workers' Federation. The main objective behind the establishment of the PNM was "maintaining contact with labour and resolving disputes and differences which may arise between them and the Administration." The PNM has a three-tier structure i.e. (a) at the Railway level—the recognised unions have access to the District/Divisional Officers and subsequently to Officers at the Headquarter of the Railway concerned; (b) at the next tier, matters not settled at the District/Divisional level are taken up by the respective federations with the Railway Board; and (c) lastly, if agreement is not reached between the federation and the Railway Board and the matters are of sufficient importance, reference may be made to an *ad hoc* Tribunal composed of representatives of the Railway Administration and workers, presided over by an impartial Chairman.

*Posts and telegraphs.* In the Posts and Telegraphs Department there are standing arrangements under which employees' demands and difficulties are discussed periodically at the Divisional and Circle levels. Matters not settled at these levels are taken up by the Central Union to the Posts and Telegraphs Board.

*Defence establishments.* A Joint Negotiating Machinery was set up by the Ministry of Defence in 1954 with a view to promoting settlement of disputes between the administration and civilian employees in Defence establishments. This scheme has also a three-tier set up. The three levels are: (a) the unit/factory/depot level; (b) the level of DGOF/Naval Headquarter/Air

Headquarters/Command Headquarters/DTD; and (c) the Ministry of Defence level.

## LABOUR-MANAGEMENT COOPERATION SCHEMES IN PARTICULAR INDUSTRIAL UNITS

Here, it is necessary to discuss briefly the efforts of some managements and unions in the private sector who initiated labour-management cooperation schemes even prior to the efforts at the governmental level. These schemes have been the outcome of comprehensive collective agreements reached between the management and labour.

### Labour Management Cooperation in the TISCO

By their supplemental agreement of January 8, 1956, the Tata Iron and Steel Company Ltd. and the Tata Workers' Union agreed to set up the following joint councils in order to provide for a closer association of employees with the management:

- (i) Joint Departmental Councils;
- (ii) Joint Works Council for the plant as a whole;
- (iii) Joint Town Council; and
- (iv) Joint Consultative Council of Management at the top-most level.

The company and the union agreed that the representatives of employees to these councils were, in the first instance, to be nominated by the union, but steps were to be taken, gradually, to introduce the principle of election by a secret ballot. The representatives of the management were to be nominated by the management.

#### *Joint Departmental Councils*

The agreement provides for the setting up of a Joint Departmental Council in each Department of the Works. Such Councils consist of two to ten representatives of management and an equal number of representatives of the works-employees, depending on the size of the department. The representatives of the works-employees are nominated by the union from among the employees of the company. The functions of these councils are as follows:

(a) to study operational results and current and long-term departmental problems; to advise on steps necessary at the departmental level; to promote and rationalise production; improve methods, layout and processes; improve productivity and discipline; eliminate waste; affect economies with a view to lowering cost; eliminate defective work and improve the quality of product; improve the upkeep and care of machinery, tools, and instruments; promote efficient use of safety precaution and devices; promote employees' welfare and activities like sports and picnics; encourage suggestions; improve working conditions; and better functioning of the department;

(b) to implement the recommendations and decisions of the Joint Consultative Council of Management or the Joint Works' Council as approved by the management; and

(c) to refer any matter to Joint Works Council for their consideration and advice.

### *Joint Works Council*

The agreement provides for the establishment of a Joint Works Council consisting of twelve representatives of the management and an equal number of representatives of the employees. The representatives of the employees are to be nominated by the union from amongst the employees of the company but exclusive of those covered by the Joint Town Council except that one such representative may be an officer of the Union who is not the employee of the company. The representatives of the management are to be nominated by the management.

The functions of the Joint Works Council are the following:

- (a) the same as those of the Joint Departmental Council at the works level;
- (b) to plan and supervise the work of the following committees within the framework of duly approved budgets and company rules and procedures:
  - (i) Central Canteen Managing Committee;
  - (ii) Welfare Committee;
  - (iii) General Safety Committee;
  - (iv) Safety Appliances Committee; and
  - (v) Suggestion Box Committee.

- (c) to follow up the implementation through the appropriate Joint Departmental Councils of its recommendations or decisions approved by the management;
- (d) to refer any matter to the Joint Consultative Council of the Management for their consideration or advice; and
- (e) to advise on any matter referred to it by the Joint Departmental Councils or by the Joint Consultative Council of Management.

### *Joint Town Council*

The Joint Town Council consists of six representatives of management and an equal number of representatives of employees. The employees' representatives are to be nominated by the Union from among the employees of the Company in the Town, Medical Health Departments including the Education Department, except that one of such representatives may be the officer of the Union who is not an employee of the Company.

*Functions.* The functions of the Joint Town Council are as follows:

- (a) to advise on steps necessary to promote, rationalise and improve output and methods of work, reduce costs, improve quality, effect economies, reduce waste and ensure improved working conditions and better functioning of the organisation as a whole;
- (b) to advice on social welfare activities in the town within the framework of duly approved budgets and company rules and procedures;
- (c) to follow up the implementation of its recommendations as decisions approved by the management; and
- (d) to refer any matter to the Joint Consultative Council of Management for their consideration and advice.

### *Joint Consultative Council of Management*

The Joint Consultative Council of Management consists of eight representatives of management and an equal number of representatives of employees. The representatives of employees are to be nominated by the Union from amongst the employees of the

Company except that not more than two of such representatives may be officers of the Union who are not the employees of the company.

The functions of the Joint Consultative Council of management are as follows:

- (a) to advise management on all matters concerning the working of the industry in the fields of production and welfare;
- (b) to advise management with regard to economic and financial matters placed by management before the council, provided that the council may discuss questions dealing with general economic and financial matters concerning the company which do not deal with questions affecting the relations of the company with share-holders or managerial staff or concerning taxes or other matters of confidential nature;
- (c) to consider and advise on any matter referred to it by the Joint Works Council or the Joint Town Council; and
- (d) to follow up the implementation through the Joint Works Council or the Joint Town Council of any recommendations made by it and approved by the company.

The agreement between the TISCO and Tata Workers' Union providing for the closer association of workers with management is the most detailed of all such agreements in the country. As the TISCO is the largest single employer in the private sector employing nearly 40,000 workers, it is natural that in such a large organisation, relations become more formalised and standardised.

The arrangement of joint councils is hierarchical with the Joint Departmental Council at the bottom and the Joint Consultative Council of Management at the top—information and recommendations flowing in both directions.

The joint councils are essentially advisory in nature; their functions being to advise management, and the company has reserved to itself the right to accept or reject the recommendations and suggestions of the joint councils. However, it should be noted that it is not the formal constitution and functions of the councils but the spirit in which they work that ultimately determines their effectiveness in guiding the management. In practice,

most decisions of the councils are enforced by the management.

### **Labour-Management Cooperation in the Indian Aluminium Company**

By their agreement of the 31st August, 1956, the Indian Aluminium Company Ltd. Belur Works and the Indian Aluminium Belur Works Employees' Union decided to set up a joint consultation machinery. The parties, realising that the solution of problems and settlement of disputes and grievances can be best achieved by joint consultation which also contributes towards better understanding and relations, agreed to set up five joint committees as:

- (1) Joint Personnel Relations Committee;
- (2) Joint Production Committee;
- (3) Joint Job Evaluation Committee;
- (4) Joint Standards Committee; and
- (5) Joint Canteen Committee.

#### *Composition and functions of the Committees*

The first three of these committees consist of equal number of members nominated by the company and the union. For the last two the principle of equality of representation is not mentioned. They are to consist of competent representatives nominated by the company and the union. These committees are consultative and advisory in character and have no executive authority. They study and discuss problems and advise the management accordingly.

### **HANDICAPS IN THE GROWTH OF LABOUR-MANAGEMENT COOPERATION SCHEMES IN INDIA**

The fundamental difficulties of labour-management cooperation are inherent in the concept itself. There is a fundamental conflict of interests between the workers and the owners of business enterprises. Labour-management cooperation is sought to be used as a method of getting around that conflict. It is futile to expect that employers and the trade unions who wage a battle around the bargaining table would sink their differences and become partners in a common enterprise on another table.

Employers are interested in labour-management cooperation as a method of increasing production. Workers are interested in labour-management cooperation because they think it to be a method of gaining control supplement to collective bargaining i.e. from the workers' view point it is an instrument of furthering industrial democracy. But who can say that furtherance of industrial democracy would lead to better production and efficiency? Whereas, industrial democracy is of secondary importance to the employer, it is of primary value to the workers. The conflict of goals bedevils the working of labour-management cooperation schemes at every step.

The second difficulty in the way of the successful operation of labour-management cooperation in India is the multiplicity of unions and lack of close contacts between trade union leaders, on the one side, and the rank-and-file, on the other. If labour-management cooperation schemes are to succeed, it is the genuine representatives of the workers who ought to represent the employees of the concern. Where there is a multiplicity of unions and only the formally registered representative union gets the right to nominate the workers' representatives, labour-management cooperation is destined to fail. It is known to all students of industrial relations and trade unionism in India that unions, which are designated as representative unions on the basis of their membership, may not always be really representative. Besides, the representatives nominated by the unions may not have close contacts with the ordinary workers. It is the strong unions which are sure of their strength and certain of their security that can cooperate with the management. The best way to achieve labour-management cooperation is to help the growth of strong and stable unions not artificially boosted and propped up with membership verification and State support. Weak unions can neither cooperate nor fight. Therefore, the first step that ought to be taken in the interests of labour-management cooperation is the acceptance of the principle of direct elections both for the purpose of finding out the representative union as well as the representatives on the Joint Management Councils. To deny the workers their right to elect their representatives on the ground that the workers are likely to be swayed away by wild promises is to deny their maturity to participate in the Joint Management Councils or other

joint bodies. If the same workers can be expected to exercise their franchise in intelligent and appreciative manner in the general elections, they can also be entrusted with the task of choosing their representatives in the field of labour-management cooperation, which is much closer to them.

The third difficulty relates to the sharing of the gains of the labour-management cooperation. Workers are assured in a vague manner that they would gain if production increases as a result of labour-management cooperation; but vague promises cannot be expected to enthuse the workers. Therefore, the principles and the procedures of distribution of the gains should be worked out in details before labour-management cooperation schemes are launched. This will give a definite assurance and commitment to the workers that they would not have to fight round the bargaining table for a share in the gains of labour-management cooperation. One appropriate test for a favourable atmosphere for the working of labour-management cooperation schemes is the prior agreement between the union and the management regarding the principles and procedures mentioned above. If the union and management cannot reach an agreement with regard to them, it is a clear indication that schemes of labour-management cooperation would not succeed.

Fourthly, the idea of labour-management cooperation in India does not appear to be the result of an inner urge on the part of the workers and management. There is a greater realisation in the governmental circles of the utility of labour-management cooperation than among employers and workers. That is why it is the government which is more anxious for the establishment of the schemes of labour-management cooperation than the parties which have to work them out. In many cases, the inducement takes the form of imposition. Under such conditions, labour-management cooperation schemes cannot be expected to succeed.

Finally, the difficulties of language, lack of proper orientation of the representatives of both labour and management, absence of cooperation and support from the ranks of middle management are present everywhere. Nevertheless, with more experience, these difficulties may be overcome by and by. Launching of labour-management cooperation should not wait till these difficulties are overcome. It is the working itself that will lead to their solution.

However, any sort of mental reservations either on the part of management or labour in regard to labour-management cooperation is likely to prove a source of its death. It is difficult, no doubt, may be well nigh impossible, for managements and workers in a capitalist society to shed their reservations completely. To think that labour-management cooperation can create a common purpose in industry is to expect too much out of it; may be, in times of national emergencies such as created by wars, labour-management cooperation schemes might succeed as is demonstrated by the history of joint consultation in Great Britain. On such occasions, a single common purpose may unite the workers and the managements. In times of peace, it is enormously difficult to achieve this common purpose.

**PART TWO**  
**LABOUR LEGISLATION**



## **CHAPTER 14**

### **PRINCIPLES OF SOCIAL AND LABOUR LEGISLATION**

Legislation is an instrument to control, restrain and guide the behaviour and courses of action of individuals and their groups living in a society. As such, all legislation by the State is social legislation. It is rooted in the coercive power of the State and the realisation as well as acceptance by the individuals of its utility. It further rests upon the assumption that individuals, groups and their associations, acting in absolute freedom to achieve their goals, interests and objectives, may clash with each other, attempt to promote their self-interest at the cost of others, and deviate into channels of action which are considered at a particular time injurious to the society. It is the general apprehension of an undesirable course of behaviour and, in many cases, the actual adoption of such a course that leads the society, working through the State, to legislate for the purpose of controlling and guiding individual and group behaviour.

#### **Other Institutions Controlling Human Behaviour**

Legislation is only one of the many institutions which operate in this area of controlling and directing individual actions into desirable channels. Two of other such instruments are: (a) religious prescriptions by churches and religious orders, and (b) social customs, traditions and conventions.

All religious orders have prescribed courses of action for their members and their groups, laying down what is good and what is

bad for them. They have laid down the goals and values of individual and social life, prescribed the methods and means to achieve them, and proscribed others. The penalty for any deviation from the prescribed course has generally been the fear of hell and excommunication from the religious order. Similarly, over a period of time, there have grown certain customs and conventions which also restrict the course of individual action and seek to prevent it from degenerating. In many cases, these customs and traditions become very deep-rooted and also very powerful, exercising an influence, sometimes even stronger than that of the State and State legislation. History is replete with illustrations where individuals have defied the authority of the State at the behest of their religious orders and social customs.

### **Declining Influence of Religious Orders and Social Customs**

However, with the spread of the knowledge of modern science and the all-pervasive spirit of reasoning and scientific inquiry, the older religious beliefs and customs have come to be questioned and subjected to the test of reasoning. Many of these customs and beliefs have failed to stand the rigorous tests and have consequently fallen into disuse, no longer exercising the same influence as they did once upon a time. These orders and beliefs might have well served the then dominant social needs and purposes and might have contributed to the stability of social order for a long period of time. But as the society grows, new needs and urges develop and technology advances, religious traditions and customs have a tendency to become out of date and fossilised. They lose the capacity of adaptation and become rigid and petrified, no longer serving any useful social purpose. Thus, one of the objectives of social legislation to-day is to modify some, eliminate a few, and replace many of these beliefs and customs.

### **Rise of Modern Social Legislation**

It is clear from what has been said above that legislation by the State is designed to meet the existing social needs and purposes, to anticipate the course of social progress and to give it a parti-

cular shape and content. However, legislation can be both progressive and regressive. Insofar as it attempts to meet the current social needs and problems, constantly seeks to keep abreast of changes in a dynamic society, and foresees the course of social progress, it is progressive in character. On the other hand, if it shelters and protects evil practices and exploitation of the under-privileged groups in society, it is regressive. Nevertheless, with the growing knowledge of the processes of social change and the growing control of the masses over the machinery of the State, the progressive features of social legislation are becoming more and more prominent.

It has been stated above that all legislations are social in character. The Indian Penal Code, the Transfer of Property Act, the Indian Income Tax Act, the Companies Act and similar other Acts have their social implications and, therefore, cannot be said to be much different from such legislations as relate to the control of beggary and prostitution, abolition of child marriage and untouchability, which are popularly considered to be social legislations. In common parlance, social legislation does not include the former category of legislations, though they are no less far-reaching in their social implications. The modern income tax laws with their progressive features leading to income redistribution, and the legislations relating to land reforms and nationalisation of industries in India have changed deep-rooted economic institutions and have caused many changes in the social order. If the definition given above is accepted, then all legislations will have to be discussed under the heading "social legislation" because they are all meant to bridge the gap between the existing laws and the current needs of the society.

Different authors, under different contexts and with their specific purposes in view, have defined social legislation in various ways. A few of such definitions will be illustrative. According to John D. Hogan and Francis A.J. Janni, "Social legislation embraces action by government authority to eliminate elements of the social-economic system which are 'objectionable' and provide elements for which the system does not make provision. The medium on which social legislation exerts its force is social

relationships.”<sup>1</sup> The Encyclopaedia Americana defines social legislation as “a general term enacted for the control of social problems arising through modern conditions of vast industrial enterprises and the changed mode of living arising therefrom.”<sup>2</sup> Social legislation has further been defined as “legislation calculated to bridge the gulf between the existing laws and the current needs of society.”<sup>3</sup>

Though the words may differ, the content is the same in all the definitions. Bentham, while talking of civil legislation, a term which he used to include all State legislations, mentioned four specific objectives of civil legislation. These are : (a) to provide subsistence, (b) to aim at abundance, (c) to encourage equality, and (d) to maintain security. These four objectives contain all the ingredients of modern social legislation as mentioned in the definitions given above.

Keeping in view the scope of social legislation in this country, one may define it as legislation designed specifically to redress existing social evils and to protect the interests of the underprivileged and handicapped sections of the community. Thus, no legislation will be included under the term “social legislation”, unless it relates to specific social evils and the creation of a set of rights and privileges or to the removal of the handicaps blocking the progress of certain groups or sections in the community.

### Social Legislation and Labour Legislation

Obviously, labour legislation is a form of social legislation but there are many points on which distinctions between the two can be made. Labour legislation regards the individual as a worker, whereas social legislation considers him primarily as a citizen.<sup>4</sup>

Labour legislation seeks to deal with the problems arising out of the occupational status of individuals. Consequently, such problems as hours of work, wages, working conditions, trade

1. John D. Hogan and Francis A.J. Janni, *American Social Legislation*, p. 4.
2. “Social Legislation”, *The Encyclopaedia Americana*, Vol. XXV. p. 165.
3. Govt. of India, Planning Commission, *Social Legislation*, p. 1.
4. Edwin E. Witle “Labour Legislation”, *Encyclopaedia of Social Sciences*, Vol. VIII p. 658.

unionism, industrial relations, etc. come to be the main subject matters of labour legislation. Thus, regulation of the behaviour of the individual or his groups is the function of labour legislation as of any other legislation. But under labour legislation, the individual is affected in the capacity of a worker or an employer. Therefore, persons who are neither employers nor workers are least affected directly by labour legislation. To make the point clear, a few examples are necessary. A legislation regarding working conditions such as the factory legislation may affect an individual in his capacity as a worker or an employer and, therefore, factory legislation is a piece of labour legislation. Similarly, laws regarding industrial relations or payment of wages or compensation for work-injuries or employment of women and children impinge upon the individuals as workers and employers. On the contrary, a law regarding ownership of property affects the individual as the owner of property; a law regarding franchise regulates the behaviour of the individual as a political citizen; a law relating to marriage affects him in the capacity of a family man; and a law with respect to sales tax bears upon him as the purchaser of a commodity.

Thus, individuals have different roles to perform and different laws are designed for regulating the different roles. Hence, it is the particular role of the individual sought to be influenced by a piece of legislation that ultimately determines the character of that law. It is this role which decides whether a particular legislation falls under the category of labour legislation, or social legislation or some other type of legislation. A few of the social legislations are directly concerned with workers, a few indirectly, while many others may not affect them at all. Insofar as social legislation aims at improving and altering social relations, labour legislation merges into social legislation. The protective aspect of labour legislation is concerned primarily with raising the lot of the workingmen whereas its regulatory aspect places emphasis on the exceptions to the general rules of freedom of contract.

## **Forces Influencing Modern Social and Labour Legislation**

### **(1) *Early industrialism***

The beginning of modern Social and labour legislation lies in

the excesses of the early industrialism that followed the industrial revolution. It is well-known that the early phase of industrialisation in the capitalist countries of the world in an era of unbridled individualism, freedom of contract and *laissez faire* was characterised by excessive hours of work, employment of young children under very unhygienic and unhealthy conditions, payment of low wages and other excesses. Naturally, such excesses could not have continued for long without causing a protest from social thinkers and philanthropes and without a demand for reform measures. The early Factories Acts flowed from these excesses and manifested the desire of the community in general to protect its weaker sections against the effects of unregulated competition. It can be stated without any fear of contradiction that modern labour legislation is the child of the industrial revolution and has followed industrialisation everywhere.

## (2) *The rise of trade unionism*

The trade union movement which itself springs from industrialisation has been another important factor contributing to the growth of labour legislation. Though the early trade unions suffered persecution and opposition from employers and suppression by the State, once they gathered strength and won recognition, they became a powerful factor in shaping the course of labour legislation. On the one hand, their demands for the protection of the interests of the working class led to legislation in the fields of wages, hours of work, workmen's compensation, social security and other areas, on the other, their growth necessitated legislation for the regulation of industrial disputes, their prevention and settlement, and maintenance of industrial peace as well as trade union rights and privileges. Trade unions have been as much conditioned by labour legislation as they have conditioned it.

## (3) *Growth of political freedom and extension of franchise*

The industrial revolution created not only the era of economic individualism but also of political liberalism. The gradual extension and adoption of universal adult suffrage placed in the hands of the working class a powerful instrument to influence the course of State policy. Gradually, the working class started sending to

legislatures their representatives who readily espoused the cause of labour and got progressive measures enacted. The emergence of labour parties in almost all industrial countries of the world generated such forces and supported and initiated such proposals of labour legislation as were beneficial to the working class. It is but natural that workers, who constitute the majority of population in almost all highly industrialised countries, should use their political power offered to them by parliamentary institutions for the betterment and amelioration of their working conditions.

#### *(4) The rise of socialist and other revolutionary ideas*

The growth of socialist ideas as initiated by Marx and his followers has been another important force conditioning the speed and direction of labour legislation in various capitalist countries. In his analysis of capitalism, Marx showed that exploitation of labour was inherent in the capitalist economic system. He, therefore, advocated the overthrow of the capitalist economic system as a necessary condition for the abolition of the system of wage-slavery and the liberation of the working class. The echo of the slogan, "Workers of the world unite, you have nothing to lose but your chains" reverberating throughout the capitalist world, sent a shudder among the conservative and capitalist circles to which ameliorative and protective social legislation came as a safe alternative. They readily grasped labour legislation as an antidote to the spread of revolutionary socialist ideas. The Fabian Society of England, the establishment of socialist and communist parties in many countries, and the first and second Internationals strengthened the trend for progressive labour legislations.

#### *(5) The growth of Humanitarian Ideas and the concept of Social Welfare and Social Justice*

Any discussion of the factors shaping the course of labour and social legislation will be incomplete unless a reference is made to the spread of humanitarian ideas and the role of the humanitarians, the philanthropes and the social reformers. It is a known fact that the early Factories Acts resulted from the efforts of the humanitarians like Hume, Place, Shaftesbury, and others.

The cause of labour was just, but it needed the support of the humanitarians and social reformers who could preach and persuade

people against the powerful social prejudices and barriers. In those early days, it required an immense moral courage and a powerful vision to visualise the evil consequences that would have resulted from the neglect of a large section of the community.

These ideas were taken up by others and were supported by investigations into the living and working conditions of the toiling masses conducted by persistent and persevering social researchers. Gradually, the ideas of social justice, implying that opportunities for development should be available to all and that the affluence of the few should not accrue at the cost of the many, spread in and took hold of the society. Researches in social sciences like sociology, psychology and anthropology exploded the myth of the natural elite and gave a powerful push to the movements for social reforms, social change and social legislation.

#### (6) *Establishment of the International Labour Organisation*

The establishment of the I.L.O. in 1919 has been a very potent factor in conditioning the course of labour legislation all over the world. The acceptance of the idea that "labour is not a commodity" and the subsequent slogan that "poverty anywhere constitutes a danger to prosperity everywhere" have influenced the course of labour legislation in all countries. The I.L.O., through persistent investigation of workers' living conditions, has continuously established the need for ameliorative labour legislation. It has initiated proposals for labour legislation, subjected them to elaborate discussions and reviews and has adopted Conventions and Recommendations. The latter, whether formally ratified and accepted or not by the member States, have led to new legislations and modification of the existing ones. The I.L.O., by trying to establish uniform labour standards insofar as the diverse conditions and uneven economic developments of the world permit has done a singular service in the field of labour legislation and labour protection.<sup>5</sup>

India became a founder member of the I.L.O. and also a permanent member of its Governing Body since its inception. As such, the I.L.O. has a particular significance for labour legislation in India and has influenced its course. Though the number

5. For details, see Chapter 26.

of conventions ratified by India is not large, the I.L.O.'s influence can be traced through the entire course of Indian labour legislation.

### **Forces Influencing the Course of Social and Labour Legislation in India**

The foregoing gives a broad outline of the general forces shaping the course of labour and social legislation. It is not possible here to go into specific details of the forces operating in particular countries during particular periods. However, a reference to those operating in India is called for, though many of them are the same as operate elsewhere. These, as discussed earlier, include:

- (1) Early industrialism and its excesses;
- (2) The growth of labour movement;
- (3) The growth of political freedom and extension of franchise;
- (4) The spread of socialist ideas;
- (5) The role of the humanitarians or social reformers, and
- (6) The establishment of the I.L.O.

The factors which are specific to India, in addition to those mentioned above, may be discussed under three heads:

- (1) The influence of colonial rule;
- (2) The struggle for national emancipation and the adoption of Indian Constitution in 1950; and
- (3) The old and archaic basis of the Indian social system.

#### *(1) The influence of the Colonial Rule*

The conditions of life and labour in the early industries were extremely rigorous; hours of work were excessive, and the industrial labour drawn from the rural areas was severely exploited. The British colonial rule in this country was primarily interested in protecting the interests of the British capital invested in the Indian industries and not so much in protecting the workers.

It is well known that the early factory and labour legislation in India resulted from the need for protecting the interests of the foreign industrialists and investors. In the tea plantations of Assam and Bengal, when life and labour became extremely intolerable, workers started deserting their place of work for their village homes.

The earliest piece of labour legislation, the Tea District Emigrant Labour Act, 1832 and Workmen's Breach of Contract Act, 1859 were designed more for the purpose of ensuring a steady supply of labour to the tea gardens in Assam than for protecting the interests of the labourers. The latter Act made the desertion of the tea-gardens by the labourers a criminal offence, in spite of the fact that the conditions of the life and labour in the tea gardens were extremely difficult and painful. Similarly, the first Factory Act of 1881 resulted from the complaints of the Lancashire textile magnets against competition by the cotton textiles produced in the Indian mills<sup>6</sup> because the labour employed by them was extremely cheap. The main idea behind this legislation was to increase the cost of production of Indian textiles by reducing the hours of work and improving other working conditions. No body denies the benefits which this legislation conferred on the Indian textile workers, but they were incidental to the main purpose of this legislation—the protection of the interest of the Lancashire industrialists.

The second influence of colonial rule on Indian labour legislation has grown out of the fact that the early administrators and the civil servants in India were drawn from England. They brought with them the pragmatism of the British society and were steeped in the English tradition. The result has been that the course and pattern of Indian labour legislation has closely followed that of England, though with a big time lag. Starting in the form of a trickle, rooted in an experimental approach, labour legislation in both the countries gradually became a torrential movement. The cotton textile industry was the first to come under the purview of the Factories Acts in both the countries, though their scope at the early stages was very restricted. Similarly, other pieces of labour legislations enacted during the period such as the various amendments to the Factories Act, the Workmen's Compensation Act, 1923, the Indian Mines Act, 1923, the Payment of Wages Act, 1936, the Employment of Children Act, 1938, the Indian Trade Unions Act, 1926, etc. have followed the British pattern.

## *(2) The struggle for national emancipation and the adoption of Indian Constitution*

The struggle for national emancipation from the colonial rule

6. See Chapter 15.

necessitated the welding together of the various sections of the Indian population. In order that the struggle could take roots and become a mass movement, the workers, the peasants, the *Kisans* and other downtrodden sections of the Indian population including the untouchables and the backward classes had to be aroused and enthused with the dreams of a better future after independence. The struggle for national independence picked up socialist and communist influence generated by the Russian Revolution and came to be closely identified with the interests of the workers and peasants. Industrial workers were organised into trade unions and the peasants were encouraged to form their own organisations. The organised industrial workers demanded improvement in their working conditions and consequently laws had to be passed to protect them from excessive exploitation. The records of the debates in the Indian Legislative Assembly show how the nationalist members made tireless efforts to get protective labour legislations enacted. The Indian Trade Unions Act, 1926 was enacted in response to the demands of the Indian trade union movement supported by its nationalist leaders. The appointment of the Royal Commission on Labour in 1929 which considerably influenced the course of subsequent labour legislation was itself the result of the pressures exerted by the nationalist and trade union forces.

The leaders of national movement had promised the establishment of a better and just social order after independence, which was ultimately embodied in the Preamble and the Directive Principles of the Indian Constitution adopted in 1950.

The Preamble to the Constitution of India embodies the resolve of the people to secure for all citizens: "Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity of the Nation."

The Directive Principles of State Policy are not enforceable through courts of law, but are regarded as fundamental in the governance of the country. Under these Principles the State is required to strive "to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice—social, economic and political—shall inform all the institu-

tions of the national life.” These Principles further require the State to direct its policy in such a manner as to “secure the right of all men and women to an adequate means of livelihood, equal pay for equal work, and, within the limits of its economic capacity and development, to make effective provision for securing the right to work, education and public assistance in the event of unemployment, old age, sickness and disablement or other cases of undeserved want.” They also require the State to secure to workers “humane conditions of work, a decent standard of life, and full enjoyment of leisure and social and cultural opportunities.” The State is further required “to guard against the abuse of workers’ health and strength and to protect childhood and youth from being forced by economic necessity to enter avocations unsuited to their age or strength, against exploitation and against moral and material abandonment.” Other Directives of the State Policy relate to the raising of the level of nutrition and improvement in the standards of living and public health; prohibition of intoxicating drinks and drugs and promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.

Labour and social legislations that have come after independence seek to implement in varying degrees the objectives embodied in the Preamble to the Constitution and the Directive Principles of the State Policy. These legislations are important milestones on the road to the establishment of a social and economic order based upon justice—economic, political and social, to all. The legislations for the abolition of the *zamindari* system, the fixation of ceilings on land holdings, prevention of beggary, for the suppression and elimination of prostitution and immoral traffic in human beings, for the reform of the system of Hindu Law of marriage and dowry are some of the social legislations that have been enacted in the period following independence.

Labour legislations such as the Factories Act, 1948, the Employees’ State Insurance Act, 1948, and the Minimum Wages Act, 1948 enacted immediately after independence are attempts partly to fulfil the earlier resolve to secure just and fair working conditions and social security, and partly at foreseeing the provisions of the Directive Principles of the State Policy. The subsequent legislations such as the Mines Act, 1952, the Employees’ Provident

Funds Act, 1952, the Plantation Labour Act, 1951 and amendments to other legislations are designed to move towards implementing the Preamble and some of the Directive Principles. Lately, the Indian Constitution was amended to remove some of the constitutional obstacles standing in the way of social and economic reforms designed to implement the Directive Principles. The 25th and most of the subsequent amendments are intended to serve this purpose.

The old and archaic Indian social structure and practices have deeply influenced social legislation in India. It is well-known that the beliefs, customs and social practices originating in the social needs of a particular time become outmoded and petrified and continue to persist, though their utility might have disappeared long before. The older the society, the more widespread are such practices, breeding injustice and social evils. A modern welfare State which aims at creating a just social order has to act against such practices. National integration demands that such beliefs and practices as cause social conflict, shatter social harmony and lead to moral degradation be banished as quickly as possible. A few of such customs and traditions which have demanded and continue to demand immediate attention in India are the following:

- (i) The practice of child marriage;
- (ii) The dowry system;
- (iii) Subordination and suppression of the rights of women;
- (iv) Caste system resulting in untouchability and social and economic backwardness of many castes and community;
- (v) Slavery, indentured, forced bonded and *beggar* labour;
- (vi) Devadasi system and Kuleena system, Reet system resulting in immoral traffic among women and girls; and
- (vii) Beggary.

These problems have received attention of the State and laws have been made against them, though many of them still continue to fester the body politic of India and demand further corrective measures.

As social order grows and changes, new problems arise which cannot be allowed to get aggravated. Such problems like juvenile delinquency, new forms of crime, injustices arising out of inequality of income and wealth, problems of social security and poverty have to be tackled through legislative measures. This

brief review of the many facets of social problems facing the country indicates the widening horizon and the fields of social legislation in India.

### **Objectives of Social and Labour Legislation**

The foregoing analysis of the factors that have shaped and the principles that have governed the course of social and labour legislation also gives an idea of its main objectives. They are:

- (1) Establishment of justice—Social, Political and Economic;
- (2) Creation and maintenance of social harmony and national integration;
- (3) Provision of opportunities to all citizens, irrespective of caste, creed and religious beliefs, for the development of their personality;
- (4) Protection of weaker sections in the community;
- (5) Maintenance of industrial peace;
- (6) Creation of conditions for economic growth; and
- (7) Protection and improvement of labour standards.

Social and labour legislations in India have sought to achieve these objectives. However, as is clear from the nature of these objectives, there cannot be a finality to their attainment. They have an ever-expanding horizon and ceaseless efforts will have to be made to reach it.

### **Categories of Labour Legislation**

On the basis of the specific concrete objectives which it has sought to achieve, labour legislation can be categorised under four heads: (a) protective, (b) regulative, (c) social security and (d) welfare.

#### **(a) *Protective legislation***

Under this category come those legislations whose primary purpose is to protect labour standards and improve the working conditions. Laws laying down the minimum labour standards in the areas of hours of work, safety, employment of children and women, etc. in factories, mines, plantations, transport, shops and other establishments are included in this category. Legislations laying down the method and manner of wage payment as well as minimum wages also come under this category. The examples of

Indian labour laws falling under this category are: the Factories Act, 1948, the Mines Act, 1952, the Plantation Labour Act, 1951, the Motor Transport Workers Act, 1961, Shops and Establishments Acts passed by the various States, the Payment of Wages Act 1936, the Minimum Wages Act, 1948 and the Employment of Children Act, 1938.

*(b) Regulative legislation*

Under this category i.e. regulative labour legislation come those laws whose main objective is to regulate the relations between employers and employees and to provide for methods and manner of settling industrial disputes. Such laws also regulate the relationship between the workers and their trade unions, the rights and obligations of the organisations of employers and workers as well as their mutual relationships. Indian examples of such laws are: the Trade Unions Act, 1926, the Industrial Disputes Act, 1947 and the industrial relations legislations enacted by the States of Maharashtra, Gujarat, U.P. and Madhya Pradesh.

*(c) Social security legislation*

The third category i.e. social security legislation covers those labour laws which intend to provide to the workmen social security benefits under certain contingencies of life. Though such legislations may cover other classes of citizens also, their primary and original goal was to protect the workers only. In India, the important laws falling under this category are: the Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948, the Coal Mines Provident Fund and Bonus Scheme Act, 1948, the Employees Provident Funds Acts, 1952 and the Central Maternity Benefit Act, 1961.

*(d) Welfare legislation*

Legislations coming under this category aim at promoting the general welfare of the workers and improve their living conditions. Though, in a sense, all labour laws can be said to be promoting the welfare of the workers and improving their living conditions and though many of the protective labour laws also contain chapters on labour welfare, the laws coming under this category have the specific aim of providing for improvements in living conditions of workers. In India, they also carry the term

“welfare” in their titles. The examples are: the Coal Mines Labour Welfare Fund Act, 1947, the Mica Mines Labour Welfare Fund Act, 1946, the Iron Ore Mines Labour Welfare Cess Act, 1961 and the welfare fund laws enacted by some of the States. A study of these laws shows how all of them provide for the creation of a fund which is spent on improving the general welfare of workers including housing, medical, educational and recreational facilities for the workers covered under these laws and, therefore, it is apt that all these laws be categorised under the head “welfare legislation”.

With this discussion of the objectives and principles of labour legislation in the background, the next few chapters are devoted to the discussion of specific labour laws in India. As the parental linkage of many of these laws can be traced to their counterparts of Great Britain, a brief comparative picture has been presented wherever possible.

## CHAPTER 15

### FACTORY LEGISLATION IN INDIA

(1) THE INDIAN FACTORIES ACT, 1881, (2) THE INDIAN FACTORIES ACT, 1891, (3) THE INDIAN FACTORIES ACT, 1911, (4) THE INDIAN FACTORIES ACT, 1922 (5) THE FACTORIES ACT, 1934 AND (6) THE FACTORIES ACT, 1948.

In view of the fact that the first factory legislation in India came almost 80 years after its beginning in Great Britain and as the Indian factory legislation has been patterned after the British factories laws, it will not be out of place to provide a brief recital of these laws.

#### **Factory Legislation in Great Britain**

The beginnings of modern labour legislation lie in factory legislation. In Great Britain, the second half of the eighteenth century witnessed a rapid growth of industrial towns and factories, particularly cotton mills. This rapid industrialisation and urbanisation without any planning resulted in insanitary and crowded living and working conditions. The introduction of machines along with division of labour facilitated the employment of women and children in factories on a very large scale. The quest for making quick profits, unmindful of its social consequences, caused the hours of work to be excessive and even children of tender ages were required to work for more than 12 hours a day. The working class, lacking any organisational strength, was not in a position to raise an effective voice against these hardships.

However, protests against the miserable conditions of children and women were occasionally raised by a few philanthropes and social workers.<sup>1</sup> A few enlightened employers<sup>2</sup> also took initiative and exercised their influence on the Parliament to adopt legislative measures protecting women and children from excessive exploitation. The first of these measures was the Health and Morals of Apprentices Act, 1802, which was subsequently followed by a series of Factory Acts. In the words of J. J. Clarke, the object of the Factory Acts was "to protect the health of employees from injury by overwork, unwholesome or dangerous conditions of labour, and especially the younger and weaker employees."<sup>3</sup>

The Health and Morals of Apprentices Act, 1802 was followed by the Factory Act, 1819 and amended in 1825 and 1831. The Factory Act, 1833 replaced the previous legislations. The Act of 1833 was amended in 1844 and was subsequently replaced by the Factory Act, 1847. Another Factory Act was enacted in 1850 with a consolidating Act in 1867. The Factory and Workshop Act of 1878 was another consolidating Act with a similar Factory and Workshop Act passed in 1901. The Factories Act, 1937 was more comprehensive than any of the previous factory legislations, was amended twice in 1948 and 1959 and completely replaced by the Factories Act, 1961. The Factories Act, 1961 with amendments is the latest piece of factory legislation protecting and laying down the main labour standards in factories of Great Britain. A summary of the important provisions of these laws relating to the types of persons and industries covered, employment prohibited and prescribed hours of work is given in Tables 27, 28 and 29.

### FACTORY LEGISLATION IN INDIA

As the process of modern industrialisation came to India almost a century after its beginning in Great Britain, the beginnings of factory legislation also had to wait for the same period of time. The first cotton textile factory was set up at Bombay as early as 1854. Subsequently, the pace for the establishment of textile

1. e.g. Richard Oastler, Thomas Sadler, and Lord Ashley (seventh Earl of Shaftesbury).
2. e.g. Robert Owen and Sir Robert Peel.
3. John J. Clarke, *Social Administration*, p. 238.

factories was accelerated and by 1870, a large number of such factories were set up at Bombay, Nagpur, Sholapur, Kanpur and Madras. Similarly, the first iron and steel work was set up in Bihar in 1873. A jute spinning mill was started at Rishra in 1855. Though the progress of the jute industry was slow for the first three decades, yet it witnessed a period of great prosperity during 1868-73 and by 1881, there were as many as 5000 power-looms at work in Bengal. In 1870, Bally Paper Mills were set up at Hoogly and soon thereafter, several tanning and leather factories were established at Kanpur. Thus, by the end of the 19th century, numerous factory establishments were in existence in the country.

As in the case of Great Britain, so also in India, the factory system in its early stages brought with it numerous evils, such as employment of women and children of tender ages, excessive hours of work, and hazardous and insanitary working conditions. A great need for protective labour legislation ameliorating the conditions of workers, particularly women and children, was felt as early as 1850's but nothing concrete was done by the British Government, though by that time, a series of Factories Acts had already been passed and enforced in England. Some occasional notes of dissatisfaction against the prevailing conditions were expressed by the Indian philanthropes and social workers even in face of the repressive policy of the alien government, but as expected, they proved a mere cry in the wilderness. However, as the textiles made in the Indian mills started competing with those manufactured in Lancashire, the main centre of textile industry in Great Britain, the Lancashire manufacturers became worried. They alleged that the inferior labour standards prevailing in the Indian mills resulted in lower production costs and hence increased the competitive power of the Indian textiles. To them, one way of preserving their competitive power was to increase the cost of production in Indian mills by raising labour standards. Thus the Lancashire manufacturers became the immediate instrument for initiating protective labour legislation which came to be embodied in the Factories Act, 1881.

The first Factories Act in India can thus be said to be the result of the joint efforts of the philanthropes and social workers in India and Lancashire manufacturers in Great Britain, though the two were motivated by altogether different considerations.

### **The Factories Act, 1881**

The Act of 1881 applied to manufacturing establishments using mechanical power and employing 100 or more persons for four months in the year. The Act regulated the employment of child labour only. Employment of children below 7 was prohibited and the maximum hours of work for those between 7 and 12 were fixed at 9 hours a day with an interval of one hour for rest and a weekly holiday. They were also granted four holidays in a month. The Act also contained provisions relating to safety and inspection of factories.

### **The Indian Factories Act, 1891**

On the basis of the recommendations of the Factory Commission appointed in 1890, the Act of 1881 was amended in 1891. According to the provisions of the new Act "factory" included "all manufacturing undertakings employing 50 persons or more". Local Governments were empowered to apply it even to premises employing 20 or more persons. "Child" was defined as any person below 14 years of age. Employment of children below the age of 9 was prohibited and the maximum hours of work for those between 9 and 14 were fixed at 7 hours a day with an interval for rest of half an hour. The Act also prohibited night work (from 8 p.m. to 5 a.m.) of women and children. It also restricted hours of work of women to 11 in a day with a rest period of 1½ hours or less depending on hours worked. Adult men were allowed one holiday every week and daily rest of half an hour.

### **The Indian Factories Act, 1911**

The cotton textile industry enjoyed an unprecedented boom in 1904-05, caused by a big increase in the demand for cloth. This led to an excessive increase in hours of work for adult male workers. The matter was discussed by the Textile Commission in 1906 and Factory Labour Commission in 1907. On their recommendations, the Government of India enacted the Indian Factories Act, 1911. The Act which also covered seasonal factories working for less than 4 months in a year provided for maximum of 12 and 6 hours of work for adults and children respectively in textile factories.

Daily hours of work for children and women in other factories remained at 7 and 11, respectively. The Act prohibited their employment between 7 p.m. and 5.30 a.m. Children were required to produce a certificate of physical fitness. The Act also prohibited the employment of women and children in some dangerous processes.

### **The Indian Factories (Amendment) Act, 1922**

The World War I broke out soon after the enforcement of the Factories Act of 1911. When peace was restored, the International Labour Organisation was established in 1919 under the Treaty of Versailles and started functioning as a part of the League of Nations. The I.L.O., from its very inception, tried to create world wide uniform standards for labour and adopted a number of Recommendations and Conventions<sup>4</sup> to this effect. Partly with a view to giving effect to the provisions of a few important Conventions and Recommendations, and partly as a result of social awareness and pressure of the people, the Government of India enacted the Indian Factories (Amendment) Act of 1922.

The Indian Factories (Amendment) Act, 1922 applied to all individual undertakings using mechanical power and employing 20 or more persons. Local Governments were empowered to extend the law to establishments employing 10 or more persons and working with or without mechanical power. Adult workers, including men and women, were not allowed to work for more than 11 hours a day and 60 in a week. A 'child' was defined as a person who had not completed his 15th year of age. Employment of children below the age of 12 years was prohibited and the maximum hours of work for those between 12 and 15 were fixed at 6 a day. Provision was also made for a medical examination for certifying the age and physical fitness of children. All workers were to be given at least one hour of rest for work exceeding six hours. They were also allowed one holiday in a week and no worker was to go without a holiday for 10 days at a time. In case of overtime, workers were entitled to remuneration at  $1\frac{1}{4}$  times the normal rate of pay. Employment of women under 18 years of age

4. See Chapter 26.

was prohibited in certain lead processes.

Some minor amendments were made in 1923, 1926 and 1931. The amendments of 1923 related to changes for administrative purposes, while those of 1926 prescribed penalties to be inflicted on parents for allowing children to work in two factories on the same day. The Act of 1931 empowered the Provincial Governments to frame rules with respect to precautions against fire.

### THE FACTORIES ACT, 1934

The Factories Act, 1934 was the direct outcome of the recommendations of the Royal Commission on Labour set up in 1929. The Commission, after examining the conditions of work of those employed in factories, suggested a thorough modification of the existing factory legislation on the basis of which the Act of 1934 was enacted.

The new Act covered all manufacturing establishments employing 20 or more persons and using mechanical power. The Act provided for a distinction between seasonal and non-seasonal factories. A seasonal factory was defined as a factory working for 180 days or less in a year. Local Governments were empowered to apply the Act to any premises working with or without machinery and employing 10 persons or more.

The hours of work in seasonal factories were not to exceed 60 in a week and 11 in a day. In perennial factories, working hours were fixed at 54 in a week and 10 in a day but employment for 56 hours in a week in factories with continuous process was permissible. The Act also required the payment for overtime at  $1\frac{1}{4}$  and  $1\frac{1}{2}$  times the ordinary rates of pay in seasonal and non-seasonal factories, respectively.

A child was defined as a person below the age of 15 years. Employment of children below the age of 12 years was totally prohibited and the daily hours of work for those between 12 and 15 were reduced to 5 (both in the seasonal and non-seasonal factories). A new category of workers known as adolescents (between the ages of 15 and 17) was created. They were not to be employed as adults without medical certificate of physical fitness. Daily hours of work of women in the seasonal factories were not to exceed 10.

The periods of spread-over were fixed at  $7\frac{1}{2}$  hours for children and 13 hours for adults. Women and children were not to be employed before 6 a.m. or after 7 p.m. but the Local Governments could vary these limits to any span of 13 hours between 5 a.m. and 7.30 p.m.

All factory workers were entitled to a weekly holiday on Sunday but exemption could be made under certain conditions. However, no worker was allowed to work for more than 10 days continuously. No such exemption was allowed in case of children.

Important provisions for health and safety were also introduced. Every factory was to ensure cleanliness, adequate ventilation and lighting, regulation of overcrowding, and prescribed standard of coolness. Adequate supply of pure drinking water, sufficient supply of water for washing purposes, fencing of dangerous machinery and proper sanitary arrangements were also required in each factory. The Local Governments were empowered to make rules in respect of standards of artificial humidification, protection of workers against excessive heat, provision of adequate shelter for the use of workers during rest periods and provision of creche, etc.

### Amendments to the Factories Act, 1934

The Factories Act, 1934 was subsequently amended in 1935, 1937, 1940, 1941, 1944, 1945, 1946 and 1947. The amendment of 1935 entirely prohibited night work of women. The amending Act of 1940 imposed statutory obligation upon Provincial Governments to extend the provisions of the Act concerning health, safety, hours of work and other conditions of work pertaining to children and adolescents to power factory employing 10 to 19 persons. The Factories (Amendment) Act, 1941 was passed to remedy a few administrative defects. The Act of 1944 was intended to remedy certain defects and difficulties in the working of the Act and introduced some minor changes regarding health and safety.

The amending Act of 1945 provided for the inclusion of a special section dealing with annual holidays with pay in respect of a perennial factories registered under the Factories Act. Provision

was made for annual paid holidays<sup>5</sup> of 10 days for adults and 14 days for children after one year of service with the possibility of accumulating the same for a period of two years. Half of the wages for holidays were to be paid to workers before they proceeded on leave and the balance on their return. The employer was required to pay the whole amount payable to a workman in respect of holidays if he was discharged after applying for leave, or if he voluntarily left the job.

A further amendment was introduced in 1946. The amending Act reduced the weekly hours from 54 to 48 in the perennial factories, and from 60 to 50 in the seasonal factories. The daily hours of work were also reduced from 10 to 9 in the perennial factories and from 11 to 10 in the seasonal factories. The Act also provided for overtime at the rate of twice the ordinary rate of pay. The work in excess of 9 hours was to be remunerated at the overtime rate in the perennial and seasonal factories alike.

The Act was amended in 1947 with a view to empowering the Provincial Government to make rules regarding provision of canteens in factories employing 250 or more workers.

### **Need for an Overall Change in the Factories Act, 1934**

Labour standards are always changing and evolving. Between 1934 and 1948 many significant changes had taken place all over the world and higher labour standards were in operation in many industrially advanced countries. The trend in labour legislation in the U.K. had also been exercising a potent influence over the course of labour legislation in India. The Factories Act, 1937 of Great Britain had introduced many significant changes in the labour standards pertaining to factories there.

During this period the I.L.O. had adopted a number of Conventions and the Government of India had already ratified a few of them. In the light of these evolving labour standards, the Factories Act, 1934 became completely out of date and failed in many respects to express the aspirations of the Indian working class.

5. Here holidays refer to annual leave with wages as provided for in the Factories Act, 1948. Today, there have been separate laws passed in different States prescribing leave on holidays.

TABLE 24  
Percentage of Factorles Remaining Uninspected in Different Provinces in 1939 and 1943

Province	Not Inspected %		Inspected once %		Inspected twice %		Inspected thrice %		Inspected more than three times %		Total Inspected %	
	1939	1943	1939	1943	1939	1943	1939	1943	1939	1943	1939	1943
Bombay	13	9	34	43	28	26	12	11	13	11	87	91
Madras	3	6	24	30	40	36	26	23	7	5	97	94
Bengal	19	30	52	46	14	12	8	7	7	5	81	70
Bihar	12	16	58	60	19	15	6	4	5	5	88	84
Punjab	31	44	37	43	19	11	9	2	4	—	69	56
Assam	38	48	41	51	15	1	5	—	1	—	62	52

Source : Govt. of India, *Labour Investigation Committee—Main Report*, p. 41.

Besides, many deficiencies of the Act were revealed by the Labour Investigation Committee appointed by the Government of India in 1944. There was a considerable evasion of its provisions, particularly, in respect of hours of work, overtime, employment of children, safety, health and sanitation. Though the number of such evasions was small in large-sized perennial factories, it was very large in small and seasonal factories. These evasions were largely due to the inadequacy of the factory inspectorate in the provinces. An idea of the extent to which factories remained uninspected in a few provinces in 1939 and 1943 can be had from Table 24.

The Committee further noted that the strength of the inspectorate was inadequate and that, in some cases, the Inspectors concentrated more on technical aspects of factory inspection than on human aspects such as employment, hours of work, working conditions, etc.

### THE FACTORIES ACT, 1948

A comprehensive Bill was prepared by the Government of India on the general lines approved in the 9th meeting of the Standing Labour Committee and in the light of the discussions held by the Chief Inspectors of Factories of the Provincial Governments. The Factories Act, 1937 of Great Britain was taken as a useful guide in preparing the Bill. It was introduced in the Dominion Assembly on the 3rd December, 1947. The Bill was passed on the 28th August, 1948 and received the assent of the Governor General on the 23rd September, 1948. The Act thus passed came into force on the 1st April, 1949. The main provisions of the Act are summarised below.

#### Definition of "Factory"

The Act defines a "factory" as "any premises including the precincts thereof: (i) whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or (ii) whereon twenty or more workers are working or were working on any day of the preceding 12 months and in any part of which a

manufacturing process is being carried on without the aid of power, or is ordinarily so carried on." [Sec. 2 (m)].

Manufacturing process includes the following:

- (a) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;
- (b) pumping oil, water or sewerage;
- (c) generating, transforming or transmitting power;
- (d) composing types of printing, printing by letter press, lithography, photogravure or other similar process or book binding; and
- (e) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels. [Sec. 2 (k)].

### Other Definitions

- (1) "Child" means a person who has not completed his fifteenth year of age. [Sec. 2 (c)].
- (2) "Adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year. [Sec. 2 (b)].
- (3) "Young person" means a person who is either a child or adolescent. [Sec. 2 (d)].
- (4) "Adult" means a person who has completed his eighteenth year of age. [Sec. 2 (a)].
- (5) "Worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process. [Sec. 2 (e)].

### Approval, Licencing and Registration of Factories

A new provision regarding approval, licencing and registration of factories has been introduced in the Act. The designs and lay out of many factory-buildings and machineries had been unsatisfactory prior to the enactment of the Factories Act, 1948. The

new provision authorises the State Governments to frame rules regarding approval, licencing and registration of factories in order that compliance with the provisions relating to health, safety and welfare could be ensured. Prior approval by the State Government or the Chief Inspector of Factories is necessary for the construction of new factories and the extension of the existing ones. Plans and specifications have to be submitted for the same. The registration and licencing of factories are to be made on the payments of prescribed fees. Prescribed fees are also to be paid at the time of renewal. [Sec. 6].

### **The Inspecting Staff**

Though the Act is a Central legislation, the responsibility for its enforcement rests with the State Governments. The Act empowers the State Government to appoint Inspectors of Factories and to prescribe their qualifications and conditions of work. The State Government may appoint a Chief Inspector of Factories who, in addition to powers conferred on him, is to exercise the powers of an Inspector throughout the State. Every District Magistrate is also an Inspector for his district. The powers and duties of the Inspectors are specified in the Act. [Secs. 8-9].

### **Certifying Surgeons**

The State Government may also appoint qualified medical practitioners as certifying surgeons. The certifying surgeons are required to discharge their duties in connection with examination and certification of young persons and of persons engaged in dangerous occupations or processes. They may also exercise medical supervision in a factory where cases of illness have occurred due to manufacturing process or other conditions of work, or where such cases have been suspected or where there is a likelihood of injury to health owing to adoption of a new manufacturing process or use of a new substance. [Sec. 10].

## **HEALTH**

Provisions relating to health include: measures in respect of the particular method of cleanliness, disposal of wastes and

effluents, ventilation and temperature, dust and fume, artificial humidification, overcrowding, lighting, drinking water, latrines and urinals, and spittoons.

### **Cleanliness**

Every factory has to be kept clean and free from effluvia arising from any drain, privy or other nuisance. Accumulations of dirt and refuse are to be removed daily. The floor of every workroom is to be cleaned at least once in every week by washing or other suitable method. Effective means of drainage have to be provided and maintained in case a floor is liable to become wet in the course of any manufacturing process. Inside walls and partitions, all ceilings and tops of rooms and walls, sides and tops of passages and staircases are to be repainted and revarnished at least once in every period of five years; cleaned in the prescribed manner at least once in every period of fourteen months; and, in other cases, are to be kept white-washed or colour-washed at least once in every period of fourteen months. The State Government is empowered to make exempting orders in certain cases. [Sec. 11].

### **Disposal of Wastes and Effluents**

Wastes and effluents are to be disposed of in an effective manner. [Sec. 12].

### **Ventilation and Temperature**

Effective and suitable provision has to be made in every factory for securing and maintaining adequate ventilation by circulation of fresh air. Besides, reasonable temperature must be maintained in every workroom. Walls and roofs are to be of such material and so designed that the temperature is kept as low as practicable. Where the nature of work involves production of excessively high temperature, the process which produces such temperature should be separated by insulating the hot parts or by other means. The State Government may prescribe standards of adequate ventilation and reasonable temperature for any factory. Sec. 13].

## Dust and Fume

Effective measures must be taken to prevent inhalation and accumulation of dust and fume in any workroom. In case any exhaust appliance is necessary, it has to be applied, as near as possible, to the point of origin of the dust, fume or other impurity. Wherever possible such points should be enclosed. No stationary internal combustion engine is to be operated unless the exhaust is conducted in the open air. An internal combustion engine is not to be operated unless effective measures have been taken to prevent accumulation of fumes. [Sec. 14].

## Artificial Humidification

In respect of all factories where humidity of air is artificially increased, the State Government is empowered to make rules regarding standards of humidification, methods to be used for artificially increasing the humidity, tests for determining the humidity of the air, and methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms. The water used for the purpose should be taken from a public supply of drinking water or other source or to be purified before it is used. [Sec. 15].

## Overcrowding

The Act also provides measures for avoiding overcrowding in the workrooms. There must be, in every workroom of a factory in existence on the date of the commencement of the Act, at least three hundred and fifty cubic feet of space for every workman. The minimum space is to be at least five hundred cubic feet for factories built after the commencement of the Act. In this regard no account has to be taken of any space which is more than fourteen feet above the level of the floor of the workroom. The Chief Inspector of Factories may by order require an employer to specify the maximum number of workers to be employed in the room. He may also make exempting orders if he is satisfied that compliance with the provisions is unnecessary in the interest of the health of the workers. [Sec. 16].

## Lighting

Sufficient and suitable lighting, natural or artificial, or both, has to be provided and maintained in every part of a factory where workers are employed. For this purpose, all glazed windows and skylights should be kept clean on both inner and outer surfaces. As far as practicable, formation of glare and shadows should be prevented. The State Government may prescribe standards of sufficient and suitable lighting. [Sec. 17].

## Drinking Water

In every factory, effective arrangements have to be made to provide and maintain a sufficient supply of wholesome drinking water at suitable points. All such points have to be clearly marked 'Drinking Water' in a language understood by majority of the workers employed in the factory. Such points are not to be situated within twenty feet of any working place, urinal or latrine. In every factory wherein more than two hundred and fifty workers are employed, provision has to be made for cooling drinking water during hot weather and for its proper distribution. [Sec. 18].

## Latrines and Urinals

Sufficient latrine and urinal accommodation of prescribed types has to be provided at suitable places and made accessible to workers at all times while they are at the factory. Separate enclosed accommodation has to be provided for male and female workers. Such accommodation has to be adequately lighted and ventilated and maintained in a clean and sanitary condition at all times. Sweepers have to be employed to keep latrines, urinals and washing places clean. In every factory where more than two hundred and fifty workers are ordinarily employed, all latrine and urinal accommodation has to be of prescribed sanitary types. The floors and internal walls of the latrines and urinals up to the height of three feet have to be laid in glazed tiles or otherwise finished so as to provide smooth polished impervious surface. Floors, partitions of the walls and blocks and sanitary pans of latrines and urinals are to be thoroughly washed and cleaned at least once in every

seven days with suitable detergents or disinfectants or with both. The State Government is empowered to prescribe the number of latrines and urinals in proportion to the number of male and female workers ordinarily employed therein and may also provide for other matters in respect of sanitation in factories. [Sec. 19].

### **Spittoons**

In every factory sufficient spittoons have to be provided at convenient places and maintained in a clean and hygienic condition. The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory. No person is to spit within the premises of a factory except in the spittoons and whosoever spits in contravention to this provision is punishable with a fine not exceeding five rupees. [Sec. 20].

## **SAFETY**

Safety provisions occupy a prominent place in the Act. Greater speed and increase in mechanisation have tended to increase industrial hazards. New provisions relating to safety have been directed towards reducing industrial hazards to the minimum. Attempts have been made to keep the provisions at par with the standards adopted by industrially advanced countries of the world.

The safety provisions relate to: fencing of machinery; work on or near machinery in motion; employment of young persons on dangerous machines; striking gear and devices for cutting off power; self acting machines; casing of new machinery; prohibition of employment of women and children near cotton openers; hoists and lifts; lifting machines, chains, ropes, and lifting tackles; revolving machinery; pressure plant; floors, stairs and means of access; pits, sumps, openings in floor etc; excessive weights, protection of eyes, precaution against dangerous fumes, explosive or inflammable dust, gas etc; precautions in case of fire; and specifications of defective parts or tests of stability.

### **Fencing of Machinery**

Every moving part of a prime mover and every flywheel con-

nected to a prime-mover, the head-race and tail race of every water wheel and water turbine and, if necessary, every part of an electric generator, motor or rotary convertor, every part of transmission machinery and every dangerous part of any other machinery must be securely fenced by safeguards of substantial construction. The State Government is empowered to frame rules in this regard. [Sec. 21].

### **Work on or Near Machinery in Motion**

If it is necessary to examine any part of a machinery while it is in motion, the examination has to be carried out only by specially trained adult workers wearing tight-fitting clothing. Such a worker is not to be allowed to handle a belt at a moving pulley unless the belt is less than six inches in width and the belt-joint is either laced or flush with the belt. Women and young persons are not allowed to clean, lubricate or adjust any part of a prime-mover or of transmission machinery while it is in motion. [Sec. 22].

### **Employment of Young Persons on Dangerous Machines**

A young person is not to be allowed to work at any machine unless he has been sufficiently instructed of the dangers arising in connection with the machine and the precautions to be observed. Besides, he must have received sufficient training in work at the machine or be under adequate supervision of an experienced person before he is allowed to work on such a machine. The State Government is empowered to prescribe the machines on which young persons are not to be employed. [Sec. 23].

### **Striking Gear and Devices for Cutting Off Power**

Suitable striking gear or other efficient mechanical appliance has to be provided, maintained, and used to move driving belts. Effective measures have to be made to ensure prevention of the belt from creeping back onto the fast pulleys. When the driving belts are not in use, they should not be allowed to rest on shafting in motion. Suitable devices have to be provided and maintained for cutting off power in emergencies. [Sec. 24].

**Self Acting Machines**

The Act provides that no traversing part of a self-acting machine in any factory is to run on its outward or inward traverse within a distance of eighteen inches from any fixed structure which is not part of the machine if a person is liable to pass over the space over which it runs. The Chief Inspector of Factories may make exempting orders in case of factories installed before the commencement of the Act. [Sec. 25].

**Casing of New Machinery**

In every factory installed after the commencement of the Act, every set-screw, bolt or key on any revolving shaft, spindle, wheel or pinion, spur, worm and other toothed or friction-gearing has to be properly encased or guarded in order to prevent danger to the workmen. Persons are also prevented to sell or hire these machineries without proper casing or guarding. The State Government is empowered to make rules specifying further safeguards to be provided in this regard. [Sec. 26].

**Prohibition of Employment of Women and Children near Cotton Openers**

Women and child workers are prevented from being employed in any part of a factory for pressing cotton in which a cotton opener is at work. However, they may be employed on the side of the partition where the feed-end is situated if the feed-end of the cotton opener is separated from the delivery end by a partition. But in this case a written permission obtained from the Inspector is necessary. [Sec. 27].

**Hoists, Lifts, Lifting Machines, etc.**

Hoists and lifts are to be of good mechanical construction and of sound material. They are to be properly maintained and examined by a competent person at least once in every period of six months. The hoistway and the liftway are to be properly enclosed. The maximum safe working load has to be plainly marked on every hoist and lift. The cage of a hoist or lift used for

carrying persons has to be fitted with a gate on each side. The State Government is given power to make exemption from compliance with these provisions of the Act. Similar provisions are applicable in respect of other lifting machines, chains, ropes and lifting tackles. [Secs. 28-29].

### **Revolving Machinery**

Where the process of grinding is carried on, a notice indicating the maximum safe working peripheral speed of every grindstone or abrasive wheel has to be properly exhibited. It must also contain the safe speed of the shaft or spindle upon which the wheel is mounted. Safe working peripheral speed of every revolving vessel cage, basket, flywheel, pulley or disc has also to be ensured. [Sec. 30].

### **Pressure Plant**

Where the work requires more than the general atmospheric pressure, effective arrangements have to be made to ensure the safe working pressure. The State Government may make rules providing for the examination and testing of any plant or machinery and prescribing other safety measures pertaining to safe working pressures. [Sec. 31].

### **Floors, Stairs and Means of Access**

Floors, steps, stairs, passages and gangways should be of sound construction and properly maintained. In case of necessity, handrails should be provided. As far as possible, safe means of access to every person should be provided in every factory. [Sec. 32].

### **Pits, Sumps, Openings in Floors, etc.**

Every fixed vessel, sump, tank, pit or opening in the ground or in a floor considered to be a source of danger has to be securely covered or fenced. Exempting orders may be made by the State Government. [Sec. 33].

### **Excessive Weights**

The Act also provides that no person is to be employed in

any factory to lift, carry or move any load which is likely to cause him injury. The State Government may prescribe the maximum weights to be lifted, carried, or moved by adult men, adult women, adolescents and children. [Sec. 34].

### **Protection of Eyes**

The State Government may require the provision of effective screens or suitable goggles if risk of injury to the eyes is caused from particles thrown off in the manufacturing process or from exposure to excessive light. [Sec. 35].

### **Precautions Against Dangerous Fumes**

A person is not allowed to enter any chamber, tank, vat, pipe flue or other confined space in which dangerous fumes are likely to be present to an extent involving risks to persons. A person can enter such a space only when it is provided with a manhole of adequate size or other effective means of egress. No portable electrical light of voltage exceeding twenty-four is to be used inside any such confined space. If the fumes are likely to be inflammable, only lights of flame-proof construction have to be used. A person may be permitted to enter such a space only when all practicable measures have been taken to remove any fumes which may be present and to prevent any ingress of fumes. Suitable breathing apparatus reviving apparatus and belts and ropes have to be kept ready for use in emergencies. Sufficient number of persons employed in the factory should be trained in the use of all such apparatus and in the method of restoring respiration. The State Government may prescribe the maximum dimensions of the manholes and may also make exempting orders. [Sec. 36].

### **Explosive or Inflammable Dust, Gas, etc.**

If the manufacturing process produces explosive or inflammable dust, gas, fume or vapour, all practicable measures have to be taken to prevent explosion by: (a) effective enclosure of the plant or machinery used in the process; (b) removal or prevention of the accumulation of such dust, gas, fume or vapour; and (c) exclusion or effective enclosure of all possible sources of ignition.

The State Government may exempt any factory or class or description of factories from this provision subject to prescribed conditions. [Sec. 37].

### **Precautions in Case of Fire**

Every factory has to be provided with adequate means of escape in case of fire. The exit doors have not to be locked or fastened in such a way as they cannot be opened easily from inside and all such doors (except in the case of the sliding types) have to be so constructed as to open outwards. The exits to be used in the case of fire have to be marked in a language understood by the majority of the workers employed there. Effective and clearly audible means of giving warning in the case of fire have to be provided. A free passage-way giving access to each means of escape in case of fire has to be maintained for the use of workers in every room of a factory. The State Government may make rules prescribing the means of escape to be provided and maintained. The Chief Inspector is empowered to prescribe necessary detailed measures to be adopted in accordance with the provisions of the Act and rules made by the State Government. [Sec. 38].

### **Other Provisions**

The Inspector of Factories may require specification of defective parts or tests of stability and to this effect may ask the manager of the factory to furnish drawings, specifications and other necessary particulars and may also require him to carry out such tests in such manner as may be specified. To ensure safety of buildings and machinery, he may specify measures to be adopted and may require prohibition of its use till its repair. The State Government may make rules requiring the provision in any factory or in any class or description of factories of further devices for securing the safety of persons employed therein. [Secs. 39-41].

### **WELFARE**

The welfare provisions relate to: washing facilities, facilities for storing and drying clothing, facilities for sitting, first aid appliances, canteens, shelters, rest rooms and lunch rooms, creches, and appointment of Welfare Officers.

**Washing Facilities**

Adequate and suitable washing facilities for the use of men and women workers separately have to be provided and maintained in every factory. These facilities should be easily accessible and kept in a clean position. The State Government is empowered to prescribe standards of adequate and suitable facilities for washing. [Sec. 42].

**Facilities for Storing and Drying Clothing**

The State Government may make rules requiring the provisions of suitable places for keeping clothing not worn during working hours and for drying of wet clothing. [Sec. 43].

**Facilities for Sitting**

Suitable sitting arrangements have to be made for all workers who perform their work in a standing position so that they may avail themselves of any opportunity to sit at the time of rest. If the Chief Inspector of Factories is convinced that the work can be efficiently performed in a sitting position, he may require the employer to make sitting arrangements for all such workers. The State Government may make exempting orders. [Sec. 44].

**First Aid Facilities**

First aid boxes containing nothing except prescribed contents have to be kept in every factory in charge of adequately trained persons. These boxes have to be readily accessible to workers during working hours. The number of such boxes is not to be less than one for every one hundred and fifty workers ordinarily employed in the factory. In every factory where more than five hundred workers are employed, an ambulance-room has to be provided and maintained. Only prescribed contents and equipments are to be kept in the ambulance room which is to be kept in charge of medical and nursing staff as prescribed by the State Government. [Sec. 45].

**Canteens, Shelters, Rest Rooms and Lunch Rooms**

In every factory where more than two hundred and fifty

workers are ordinarily employed, the State Government may make rules prescribing the provision and maintenance of a canteen or canteens for the use of workers. The rules may provide for the standards in respect of construction, accommodation, furniture and other equipments of the canteen; food stuffs to be served and their charges; constitution of the managing committee for the canteens; and the date by which such canteen is to be provided.

The Act also provides for the provision and maintenance of shelter or rest rooms and a suitable lunch-room in every factory where more than one hundred and fifty workers are ordinarily employed. A canteen managed in accordance with the provisions of the Act may be treated as a part of the obligation for maintaining a shelter or rest-room. These rooms are to be kept sufficiently lighted and ventilated and maintained in a cool and clean condition. No workman is allowed to take his meal in the workroom. The State Government may make rules in respect of standards of construction, accommodation, furniture and other equipments of shelters, rest rooms and lunch rooms and may also exempt any factory or class or description of factories from compliance with these provisions. [Secs. 46-47].

### **Creches**

The Act also requires the provision and maintenance of creches in every factory where more than fifty women workers are ordinarily employed. Creches must have adequate accommodation and are to be adequately lighted and ventilated and maintained in a clean and sanitary condition. Trained women are to be appointed to take care of children and infants in the creches. The State Government is also empowered to make rules pertaining to the location, standards of construction, furniture and other equipment of rooms, additional facilities for the care of children, distribution of free milk or refreshment and regular feeding of children. [Sec. 48].

### **Welfare Officers**

In every factory where five hundred or more workers are ordinarily employed, the occupier is required to employ such number of Welfare Officers as may be prescribed by the State Government.

The State Government is empowered to prescribe the duties, qualifications and conditions of service of Welfare Officers. [Sec. 49].

### **Power to Make Welfare Rules**

The State Government may also frame rules pertaining to making exemptions on proper conditions and the association of representatives of workers with the management in welfare arrangements for the workers. [Sec. 50].

## **WORKING HOURS OF ADULT WORKERS**

### **Daily and Weekly Hours of Work, Intervals of Rest and Spreadover**

The hours of work of adult workmen are not generally to exceed 9 a day and 48 in a week. The period of work in a day is to be fixed in such a manner that no workman is required to work more than 5 hours continuously. A rest interval of at least half an hour is to be given to every adult workman. The period of spreadover inclusive of the period of rest is not to be more than 10½ hours in a day. [Secs. 51, 54, 55, 56].

In certain cases, these requirements may be relaxed by the Chief Inspector of Factories. The State Government is empowered to make rules exempting persons holding supervisory, managerial and confidential positions from being brought within the purview of the aforesaid requirements. The State Government may also make exempting rules relating to daily and weekly hours of work intervals for rest, and spreadover in respect of adult workers engaged in:

- (1) urgent repairs;
- (2) work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of the factory;
- (3) work which is necessarily so intermittent that intervals during which they do not work, while on duty, ordinarily amount to more than the intervals for rest required under the Act;
- (4) any work which for technical reasons must be carried on continuously;
- (5) the printing of newspapers, who are held up on account of the break down of machinery (intervals for rest excluded); and

(6) the loading and unloading of railway wagons.

Additional exemptions from the provisions relating to spreadover may also be made in respect of workers engaged in manufacturing process which cannot be carried on except at times dependent on the irregular action of natural forces.

In framing exempting rules, the State Government is required not to exceed (except in respect of workers engaged on urgent repairs) daily hours of work to more than 10 hours, and the period of spreadover (inclusive of interval for rest) to more than 12 hours. The total period of overtime in any quarter is not to exceed fifty hours. However, in respect of workers engaged in any work which, for technical reasons must be carried on continuously, these requirements may be waived in order to facilitate shift work in absence of a worker who has failed to report on duty. Rules thus framed are not to remain in operation for more than three years. Exempting orders may also be made by the State Government to deal with exceptional press of work but the period of operation of such an order is not to exceed three months in any year. [Secs. 64-65].

### **Additional Restrictions on the Employment of Women**

The Act provides no exemption from the requirements of daily hours of work in respect of women but no woman is to be employed in any factory except between hours of 6 a.m. and 7 p.m. The State Government may, however, vary the limits so laid down, but no such variation is to authorise the employment of women between 10 p.m. and 5 a.m. The State Government is empowered to make rules permitting night work of women working in fish-curing or fish-canning factories where their employment beyond the specified limits of night work is necessary to prevent damage to raw material. Further, no change of shifts for women is authorised except after a weekly holiday or any other holiday. [Sec. 66].

### **Weekly Holiday**

The Act provides for at least one day of weekly rest to every workman employed in a factory. A substitute holiday may be provided but such a holiday is to fall on one of the three days

immediately before or after the usual holiday and in no case the worker is to be required to work for more than ten days consecutively. [Sec. 52].

The State Government is empowered to make exempting rules in respect of workers engaged in:

- (1) any work which for technical reasons must be carried on continuously;
- (2) making or supplying articles of prime necessity which must be supplied everyday;
- (3) manufacturing process which cannot be carried except during fixed seasons;
- (4) manufacturing process which cannot be carried on except at times, dependent on irregular action of natural forces;
- (5) engine-rooms or boiler-houses or attending to power-plant or transmission machinery; and
- (6) loading or unloading of railway wagons.

Exempting orders operating for a maximum period of three months in a year may also be made to deal with exceptional press of work.

However, in any factory where a worker is deprived of any of the weekly holidays as a result of passing of an order or making of a rule by the State Government, he is entitled to compensatory holidays equal to the number of holidays so lost within the month in which holidays were due to him or within two months immediately following that month. [Secs. 53, 64, 65].

### Extra Wages for Overtime

A worker working for more than nine hours in any day or forty-eight hours in any week is entitled to wages at the rate of twice his ordinary rate of wages in respect of overtime work. Where the system of piece-rate for wage payment is practised, the State Government, in consultation with the employer and representatives of workers, may fix time-rate equivalent to average rate of earnings of those workers. The rates so fixed are to be regarded as ordinary rates of wages for those workers. Ordinary rate of wages includes basic wage and other allowances to which the worker is entitled, and may include cash equivalent of concessional sale of food grains and other articles but does not include a bonus.

The State Government may frame rules prescribing the manner in which cash equivalent of the advantages accruing through concessional sale to worker of food grains and other articles may be determined. [Sec. 59].

### **Register of Adult Workers**

The manager of every factory is required to maintain a register of adult workers showing the name of each worker in the factory, the nature of his work, the group in which he is included, the relay to which he is allotted (if his group works on shift), and other particulars prescribed by the State Government. Such a register has to be made available to the Inspector at all times during working hours. The State Government may prescribe the form of the register of adult workers, the manner in which it has to be maintained and the period for which it has to be preserved. [Sec. 62].

### **Prohibition of Overlapping Shifts**

The Act provides that no work is to be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government is, however, empowered to make exemptions subject to prescribed conditions. [Sec. 58].

### **Notice of Periods of Work**

A notice of work for adults showing clearly for everyday the periods during which adult workers are required to work has to be displayed and correctly maintained in every factory. The periods shown in the notice must be fixed in accordance with relevant provisions of the Act. The State Government may prescribe the forms of such notice and the manner in which it is to be maintained. [Sec. 61].

## **EMPLOYMENT OF YOUNG PERSONS**

The Act prohibits the employment of children below 14 in factories. A child who has completed his fourteenth year of age or an adolescent (a person between 15 and 18) is not to be

employed in any factory unless the manager of the factory has in his custody a certificate of physical fitness granted to such a child or adolescent who is required to carry a token to this effect while at work. [Secs. 67-68].

### Certificate of Fitness

The application for the grant of certificate of fitness may be made by the young person or his parent or guardian, but such an application has to be signed by the manager of the factory to the effect that he will be employed in the factory if certified to be fit for work. The manager of the factory himself may also apply for such a certificate. The Certifying Surgeon, after receiving an application, is required to examine him and ascertain his fitness for work in the factory. The Certifying Surgeon, after examination, may grant or renew a certificate of fitness to work in a factory as a child (if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards, and that he is fit for such work) and as an adult (if he is satisfied that the young person has completed his fifteenth year and is fit for a full day's work in a factory).

A certificate of fitness thus granted or renewed is to be valid only for a period of twelve months from the date of issue. When a Certifying Surgeon refuses to grant or renew a certificate or revokes a certificate, he is required on the request of any person who could have applied for the certificate or the renewal, to state his reasons for doing so in writing. Any fee payable in this regard has to be paid by the occupier of the factory and is not recoverable from the young person, his parents or guardian.

An adolescent who has been granted a certificate of physical fitness to work as an adult is to be treated as an adult. The provisions relating to hours of work and annual leave with wages applicable in the case of adult workers will also apply in the case of such an adolescent person. However, an adolescent who has not attained the age of seventeenth year is not to be employed or permitted to work in any factory during night (a period of at least twelve consecutive hours which has to include an interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m.). An adolescent who has not been

granted a certificate of fitness to work in a factory as an adult is to be considered a child for all the purposes of the Act. An Inspector may also require medical examination of young persons if he considers that any person without a certificate of fitness is a young person or that a young person having a certificate of fitness is no longer fit to work in such a capacity. [Secs. 69-70].

### **Working Hours for Children**

A child is not to be employed or allowed to work in any factory for more than four and half hours in any day, and during night (being a period of at least twelve consecutive hours which includes the interval between 10 p.m. and 6 a.m.).

The period of work of all children employed in a factory has to be limited to two shifts only. These shifts should not overlap or spread over more than five hours each. Each child is required to work in only one of the relays which can be changed only once in thirty days. No exemption from the provision of weekly holidays is permissible in the case of children. A child is not required or allowed to work in any factory on any day on which he has already been working in another factory. [Sec. 71].

### **Register of Child Workers**

The Act requires the manager of every factory to maintain a register of child workers showing the name of each child worker in the factory, the nature of his work, the group in which he is included, the relay to which he is allotted and the number of young persons who have been granted certificate of fitness. Such a register has to be made available to the Inspector at all times during working hours. The State Government may prescribe the form of register, the manner in which it is to be maintained and the period for which it has to be preserved. [Sec. 73].

### **Notice of Periods of Work for Children**

A notice of periods of work for children showing clearly for every day the periods during which children may be required or allowed to work has to be displayed and correctly maintained in every factory in which children are employed. A child is to be

employed in any factory only in accordance with the notice of periods of work thus displayed. [Sec. 72].

The State Government is empowered to make rules prescribing the forms of certificates of fitness, fees to be charged for issue of such certificates and their renewals, physical standards to be attained by children and adolescents, and regulating the procedure of Certifying Surgeons and specifying additional duties for Certifying Surgeons.

### ANNUAL LEAVE WITH WAGES

The Act also provides for annual leave with wages. It has been specifically provided that provisions in respect of annual leave with wages are not to operate "to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service." If such an award, agreement, or contract of service provides for a longer annual leave with wages than provided in this Act, the worker is entitled to only such longer leave. [Sec. 78].

Every worker who has worked for a period of 240 days or more in any calendar year is to be allowed during subsequent year leave with wages amounting to at least one day for every twenty days of work in previous year in case of adult and at least one day for every fifteen days of work in case of children.

The days of lay-off by agreement or contract or as permissible under Standing Orders, maternity leave for any number of days not exceeding twelve weeks (in case of female worker) and leave earned in the year prior to that in which leave is enjoyed have to be included in calculating days on which the worker has worked in the factory for computing the period of 240 days or more, but he is not entitled to earn leave for these days. The leave admissible has to be exclusive of all holidays whether occurring during or at either end of the period of leave. A worker whose service begins otherwise than on the first day of January is entitled to get leave with wages if he has worked for 2/3rd of the total number of days in the remainder of the calendar year.

A discharged or dismissed worker is entitled to get leave with wages in accordance with these provisions even if he has not worked for the entire period which entitles him to get leave. In

making calculations fraction of leave of half a day or more is to be treated as one full day's leave and fraction of less than half a day has to be omitted.

In case a worker does not avail himself of the whole of leave allowed to him, any leave not taken by him is to be added to the leave to be allowed to him in the succeeding calendar year, but the total number of days of leave that may be carried forward to a succeeding year is not to exceed thirty in case of adult and forty in case of a child.

A worker is required to apply for leave at least fifteen days before the date on which he wishes his leave to begin, but in case of public utility services he has to apply at least thirty days in advance.

A worker who has been allowed leave for not less than four days in case of an adult and five days in the case of a child is to be paid wages due for the period of leave allowed before the commencement of his leave. If a worker wants to get leave with wages to cover a period of illness, he is to be granted leave even if the application is not made and in such a case, payment allowed in advance has to be made not later than fifteen days, and in case of public utility services, not later than thirty days, from the date of application of leave.

The occupier or manager of the factory may lodge with the Chief Inspector a scheme in writing to regulate grant of allowable leave after making an agreement with Works Committee or similar committee or representatives of the workers of the factory for ensuring continuity of work. Such a scheme has to be displayed at convenient places and can remain in force only for twelve months from the date of its enforcement but may be renewed for a period of twelve months at a time. The display of scheme can be renewed by occupier or manager in agreement with the Works Committee or a similar committee or representatives of workers. Refusal to grant leave is not to be made except in accordance with such a scheme. A worker who has applied for leave with wages but has not been given such leave in accordance with any such scheme is entitled to carry forward the unavailed leave without any limit.

If the employment of a worker who is entitled to leave is terminated by the occupier before he has taken the entire leave to

which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory has to pay to him the amount payable to him in respect of the leave not taken. Such a payment has to be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker voluntarily quits his employment, on or before the next pay day. The unavailed leave of a worker is not to be taken into consideration in computing the period of any notice required to be given before discharge or dismissal. [Sec. 79].

### **Wages During Leave Period**

A worker is to be paid for the leave allowed to him at a rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles. Any such sum payable by an employer which is not paid by him is recoverable as delayed wages under the Payment of Wages Act, 1936. The State Government may make rules directing managers of factories to keep registers containing prescribed particulars. Where the State Government is satisfied that the leave rules applicable to workers in a factory are not less favourable than the provisions of this Act, it may, by written order, exempt the factory from all or any of the provisions pertaining to annual leave with wages. [Secs. 80-84].

### **OTHER PROVISIONS**

The Act also contains provisions relating to dangerous operations, notice of accidents and diseases, exemption of public institutions, and application of the Act to certain premises etc. Besides, it contains a separate chapter on penalties and procedural matters. Certain other provisions of the Act relate to: submission of returns, obligation of workers, powers of the Centre to give directions to the States, application of the Act to government factories, and restriction on disclosure of information etc.

## LEADING TRENDS IN FACTORY LEGISLATION IN INDIA

It has been said earlier that Indian factory legislation bears a striking similarity to its British counterpart. As a matter of fact, the Indian factory legislation is patterned closely after the British factory legislation which has served as a guide to the legislators and administrators in this country. If the Health and Morals of Apprentices Act, 1802 of Great Britain is taken as the first factory legislation there, then the first Indian Factories Act came exactly 80 years later in 1881. This late arrival of factory legislation in India is apparently the result of the late beginning of the process of industrialisation in this country as well as the apathy and indifference of an imperial rule to the welfare of the working people.

The similarity between the British and the Indian patterns of factory labour legislation is partly due to the fact, that factory conditions under free competition and profit seeking motivation within the *laissez faire* political framework have the knack of repeating themselves. Similar maladies demand similar treatment. Secondly, as the British factory legislation came earlier, India could draw upon the experience of Great Britain in the field of legislation and its implementation. Finally, the administrators in India then were mostly drawn from Great Britain and had behind them the experience, training and tradition of legislation in that country.

Be as it may, the Indian factory legislation can very well be said to have been based upon the British factory legislation and has traversed the same path. Beginning in 1881, the coverage under Indian factory legislation has widened under each subsequent enactment.

A comparative idea of the changes with respect to the coverage (both in respect of industries and persons), maximum hours of work, and prohibition of night-work that have taken place since the inception of factory legislation can be had from Tables 25 and 26 in respect of India and Tables 27, 28 and 29 in respect of Great Britain.

### 1. Coverage of Persons Employed

The Indian Factories Act, 1881 began with protecting the interests of children employed in factories in the same way as the

TABLE 25

## Coverage of various Factories Acts in India (1881-1948)

<i>Name of the Act</i>	<i>Types of industrial establishments covered</i>	<i>Types of persons whose hours of work were regulated</i>	<i>Employment prohibited</i>
1. The Indian Factories Act, 1881	Manufacturing establishments using mechanical power and employing 100 or more persons for four months or more in a year	Children between 7 and 12	Children below 7
2. The Indian Factories Act, 1891	Manufacturing establishments using mechanical power and employing 50 or more persons (could also be applied by the Local Govts. to establishments employing 20 or more persons)	1. Children between 9 and 14 2. Women	Children below 9
3. The Indian Factories Act, 1911	" "	1. Children 2. Women 3. Adult men	Children below 9
4. The Indian Factories Act, 1922	Manufacturing establishments using mechanical power, employing 20 persons or more (could also be applied by the Local Govts. to establishments employing 10 or more persons)	"	Children below 12
5. The Indian Factories Act, 1934	" "	"	Children below 12
6. The Indian Factories Act, 1948	Manufacturing establishments using mechanical power employing 10 or more persons, and those not using mechanical power but employing 20 or more persons	"	Children below 14

TABLE 26

Maximum Hours of Work prescribed and extent of Night Work prohibited, under various Factories Acts in India (1881-1948)

Name of the Act	Maximum hours of work		Night work prohibited in respect of
	Maximum hours of work	Applicable to	
1. The Indian Factories Act, 1881	9/day	Children between 7 and 12	—
2. The Indian Factories Act, 1891	(a) 7/day (b) 11/day	(a) Children between 9 and 14 (b) Women	Women, and children between 9 and 14 (8 p.m. to 5 a.m.)
3. The Indian Factories Act, 1911	(a) 6/day (b) 12/day	(a) Children between 9 and 14 (b) All adults	Women, and children between 9 and 14 (7 p.m. to 5.30 a.m.)
4. The Indian Factories Act, 1922	(a) 6/day (b) 11/day, 60/week	(a) Children between 12 and 15 (b) All adults	"
5. The Factories Act, 1934	(a) 5/day (b) 11/day, 60/week (c) 10/day (d) 10/day, 54/week	(a) Children between 12 and 15 (b) Adults in seasonal factories (c) Women in seasonal factories (d) Adults in perennial factories	Women, and children between 12 and 15 (7 p.m. to 6 a.m.)
6. The Factories Amendment Act, 1946	(a) 9/day, 48/week (b) 10/day, 50/week	(a) Adults in perennial factories (b) Adults in seasonal factories	Children (a period of at least 12 consecutive hours which has to include the interval between 10 p.m. and 6 a.m.)
7. The Factories Act, 1948	(a) 4½/day  (b) 9/day, 48/week	(a) Young persons between 14 and 18 unless allowed to work as adults (b) All adults and young persons granted certificate of physical fitness to work as adults	Children and women

TABLE 27

## Coverage of various Factories Acts in Great Britain (1802-1961)

<i>Name of the Act</i>	<i>Types of industries covered</i>	<i>Types of persons whose hours of work were regulated</i>	<i>Employment prohibited</i>
1. The Health and Morals of Apprentices Act, 1802	Cotton & Woolen Mills and Cotton & Woolen factories	Apprentices	
2. The Factory Act, 1819	Cotton Mills only	All children between 9 and 16	Children under 9
3. The Factory Act, 1825	Cotton Mills only	All children between 9 and 16	
4. The Factory Act, 1831	Cotton Mills only	All persons between 9 and 21	
5. The Factory Act, 1833	All Textile Mills	All persons between 9 and 21	
6. The Factory Act, 1844	All Textile Mills	Children over 8, young persons (13-18) & women	Children under 8
7. The Factory Act, 1847	All Textile Mills	Young persons and women	
8. The Factory Acts, Extension Act, 1867	Any premises in which 50 or more persons are employed in a manufacturing process	Children over 8, young persons and women	
9. Workshop Regulations Act, 1867	Establishments where less than 50 persons are employed	Children over 8, young persons and women	Children under 8
10. The Factory and Workshop Act, 1878	Factory workshop, domestic factory and workshop	Children over 10, young persons and women	Children under 10
11. The Factories Act, 1937	Any premises in which persons are employed in manual labour in any process of manufacturing as specified in the Act	Children over 13, young persons and women	Children under compulsory school age (Education Act, 1944)
12. The Factories Act, 1948	"	"	13 years of age
13. The Factories Act, 1959	"	"	"
14. The Factories Act, 1961	"	"	"

TABLE 28  
Maximum Hours of Work prescribed under various Factories Acts in Great Britain (1802-1961)

<i>The Name of the Act</i>	<i>Maximum hours of work</i>	<i>Applicable to</i>
1. The Health and Morals of Apprentices Act, 1802	12	Apprentices
2. The Factory Act, 1819	12½	
3. The Factory Act, 1825	(a) 12 (b) 9 (Saturday)	All children between 9 and 16
4. The Factory Act, 1833	(a) 9/day, 48/week (b) 12/day, 69/week	All children between 9 and 16 (a) Children between 9 and 13 (b) Young persons between 13 and 18
5. The Factory Act, 1844	(a) 6½/day, 30/week (b) 12/day, 69/week	(a) Children between 9 and 13 (b) Young persons between 13 and 18
6. The Factory Act, 1847	(c) 12/day, 69/week	(c) Women
7. The Factories Act, 1937	10/day, 58/week (a) 9/day, 48/week (b) 44/week	Young persons, Women (a) All persons above 16 (b) Persons under 16
8. The Factories Act, 1948	"	"
9. The Factories Act, 1959	"	"
10. The Factories Act, 1961	"	"

TABLE 29  
Extent of Night Work prohibited under various Factories Acts in Great Britain (1802-1961)

<i>Name of the Act</i>	<i>Night work prohibited from</i>	<i>Type of person</i>
1. The Health and Morals of Apprentices Act, 1802	9 p.m.-5 a.m.	Apprentices below 18
2. The Factory Act, 1819	9 p.m.-5.30 P.m.	Children between 9 and 16
3. The Factory Act, 1831	9 p.m.-5 p.m.	Persons between 9 and 21
4. The Factory Act, 1844	9 p.m.-6 p.m. or	Persons between 9 and 21
5. The Factory Act, 1850	7 p.m.-7 a.m.	Women and young persons
	6 p.m.-6 a.m.	
6. The Factory Act, 1853	6 p.m.-6 a.m. or	Children only
7. The Factory & Workshop Act, 1878	7 p.m.-7 a.m.	Women and young persons
	6 p.m.-7 a.m. or	
8. The Factories Act, 1937	8 p.m.-7 a.m.	Women and young persons
9. The Factories Act, 1948	"	"
10. The Factories Act, 1959	"	"
11. The Factories Act, 1961	"	"

Health and Morals of Apprentices Act did in Great Britain. Subsequently, women and adult men workers were also brought under the purview of factory legislation. To-day, the Factories Act, 1948 regulates conditions of work of all the workers employed in factories.

## 2. *Coverage of Units and Industries*

The coverage of factories under factory legislation in India has been expanding throughout. What was intended to cover only factories employing 100 or more workers in 1881 has come to cover factories employing 10 or more persons since 1948. Every subsequent legislation after 1881 witnessed an expansion in the number of units covered for practically every enactment thereafter brought down the exemption limits.

## 3. *Coverage of Topics and Subject Matters*

As in the case of the British factory legislation, the topics covered and the types of protection given to workers have also been expanding. Whereas the first Factories Act, 1881 regulated only the hours of work and that too of children only, subsequent legislations have gone to cover a much wider ground as the study of the later factory legislations shows. To-day, the Factories Act, 1948 regulates not only the hours of work but also other conditions of employment such as those relating to health, safety, welfare, leave with wages etc. The Act is comprehensive in character and wide in its coverage. It has consolidated the gains of earlier legislations, besides adding a separate chapter on welfare.

## CHAPTER 16

### LEGISLATION CONCERNING WAGES

With the emergence of the industrial revolution and the consequent industrialisation, large masses of the population have lost their status as independent workers and become wage-labourers. Wages have come to be the main source of their livelihood. To-day, in the industrially developed countries, wage-labourers account for more than 75 to 85 per cent of the total labour force. In the early days of the process of industrialisation within a capitalistic economic frame-work, it had always been presumed that the terms and conditions of employment including the mode and manner of the payment of wage and its quantum were determined by negotiations between the individual worker and his employer. It was also presumed that such negotiations resulted in a contract mutually acceptable. It was further believed that the worker would not accept an employment if he had found that the manner of the wage-payment and its quantum were unsatisfactory. However, in reality, the strong economic position of the employer and the economic helplessness of the worker never allowed him a say in the matter. As a result, the employer unilaterally laid down the mode and manner of wage payment and also determined the wage rates in his own interests. The worker suffered both ways.

Gradually, the evils of this unilateral action on the part of the employers became so glaring that the State was forced to legislate in order to regulate the mode and manner of wage pay-

ment and also to lay down minimum rates of wages in certain occupations and industries.

## A. PAYMENT OF WAGES LEGISLATION

### Objectives

The main evils flowing from this unilateral determination of the mode and manner of wage payment were the following:

- (1) Payment in kind;
- (2) When paid in cash, payment in illegal tender;
- (3) Arbitrary deductions;
- (4) Irregular payments; and
- (5) Non-payment altogether.

#### (1) *Payment in kind*

Prior to the introduction of money, wages were paid in kind, of course. That is characteristically true of many agricultural economies as is also witnessed in India to-day. Even after the introduction of money, the system of payment of wages in kind has persisted. The payment of wages in kind leads to certain evil practices which are familiar to all those who have seen the operation of such a system in the Indian villages. Chief among these evils are under-weighment and payment in terms of inferior quality of goods or commodities supplied. Apart from these evils, the payment of wages in kind imposes a severe restriction on the freedom of the worker to spend his wages as he likes. The goods have to be directly consumed or if they are to be exchanged for money the worker runs the danger of losing a part of the value of the wage-goods in the process of exchange. But there is also an advantage flowing from payment of wages in kind i.e. when prices start rising and inflationary trends operate, the real wages do not depreciate. However, the disadvantages of and the evil practices sheltered under the system of wage payment in kind outweigh the advantage mentioned above. Hence, it becomes socially desirable that the mode and manner of wage payment be regulated by law rather than be left to the choice of the employers.

#### (2) *When paid in cash, paid in illegal tender*

Even when payment was made in cash, employers would

prefer to pay, in many cases, in illegal tender and in the form of depreciated currency. The workers had neither the means nor the will to resist such practices.

### (3) *Arbitrary deductions*

Besides making payment to workmen in illegal tender and depreciated currency, the employers also made arbitrary deductions from the wages of the workers. These deductions related primarily to fines for breach of discipline, compensation to the master for spoilt work or damage done to materials, and charges for materials, tools, services, etc. supplied by the employer, but on many occasions arbitrariness was exercised both in the frequency and amount of wage deductions.

Fines were imposed on slight infringements of the factory rules and for acts or omissions arbitrarily decided by the employers. These acts, omissions and commissions were not specified in many cases and sometimes, fines were imposed even when no damage or loss or interruption or hindrance was caused to the employer or to his business.

Arbitrary deductions were also made in respect of bad or negligent work or injury to the materials or other property of the employer. In many cases, these deductions were unfair and unreasonable and no particulars showing the acts or omissions for which deductions were made were supplied by the employers. Moreover, on many occasions, the amount of deduction far exceeded the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman.

It has been the general practice of the employers to deduct certain amount from the wages of the workmen with respect to the use or supply of materials, tools, machines and other amenities. In the absence of any control by the State, the employers charged excessive amounts in comparison to the actual value of these materials and services supplied to the workmen. Apart from these, deductions were also made for Goshalas, Dharmshalas and other charitable purposes without obtaining the consent of the workmen concerned and without any guarantee that the amount so deducted would be spent on purposes for which they were meant. As a result of these deductions, the quantum of wages received by the worker was much less than what he actually earned

on the basis of wage rates decided upon at the time of employment.

(4) *Irregular payment and non-payment altogether*

The employers, in their desire to economise on working capital and to escape payment of interest on borrowed capital, would postpone payment of wages on various pretexts. There was no guarantee that payment would be made even at the end of the various postponements. The employers withheld paying wages altogether in many cases depriving the workers of their hard-earned income. Illiterate and ignorant as they were, they were helpless in absence of any trade union or legal support to protest against these unjust practices of the employers. Under the Common Law they could, of course, go to a court of law and file a civil suit for damages which really meant for them jumping from the frying pan into the fire. Thus, they could do nothing but meekly submit to the mighty employers.

Gradually, there was a realisation of the injustice involved in the situation and the State was forced to come to the rescue of the workers and such legislations as the Truck Acts in Great Britain and Payment of Wages Act in India were enacted.

### THE PAYMENT OF WAGES ACT, 1936

The widespread existence of numerous such evils as had been continuously alleged by trade unions and social workers was confirmed by the findings of a Committee appointed by the Government of India in 1925. With a view to removing the malpractices, legislative proposals were formulated in 1928 but were subsequently placed before the Royal Commission on Labour in 1929 for reconsideration. The Royal Commission, after examining the connected problems, made several recommendations, on the basis of which, the Payment of Wages Act, 1936, the first legislation of its kind in India, was enacted. The Act, with certain subsequent amendments, is still in force in the country.

As has been pointed out earlier in the introduction to this chapter, the Act intends to remedy the evil practices growing out of the freedom of the employers to determine the mode and manner of wage payment as they liked. The provisions of the

Act can be grouped under the following heads according to the evils which they seek to remedy or the benefits that they intend to confer:

- (1) Ensuring regularity of payment;
- (2) Ensuring payment in legal tender;
- (3) Preventing arbitrary deductions;
- (4) Restricting employers' right to impose fines; and
- (5) Providing remedy to workers.

In order that the due wages are paid in time and the payment is not postponed indefinitely, sections 4 and 5 put the employers under a legal obligation to fix a wage-period, at the end of which, they are liable for the payment of wages. With a view to guaranteeing that the payment is made in legal tender, section 6 makes the employers legally responsible for the payment of wages in prescribed currencies only. In order that the employers are prohibited from making arbitrary deductions, sections 7-13 lay down the authorised deductions and restrict the employers' right to make any other deductions. In order to ensure that the employers do not impose arbitrary fines and collect them as they like, sections 7-8 restrict their rights in this regard. Finally, in order that the workers have an easy and quick remedy against the violation of their rights by the employers, section 14 provides for an inspectorate which they can utilise. The institution of an inspectorate to prevent and institute proceedings against the employers for violating the provisions of the Act and denying the workers their due is a real source of help to the mass of workers. Workers no longer need resort to the time-consuming and expensive litigations in the courts of law for claiming their dues from their defaulting employers. The main provisions of the Act as they stand amended up-to-date are summarised below.

## Scope

The Act applies in the first instance to persons employed in any factory and to persons (otherwise than in a factory) upon any railway by a railway administration, or either directly or through a contractor, by a person fulfilling a contract with the railway administration. The State Government is empowered to extend the provisions of the Act to any class of persons employed in any

industrial establishments after giving three months notice by notification in the official gazette. Industrial establishment has been defined as any: (a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward; (b) air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India; (c) dock, wharf or jetty; (d) inland vessel, mechanically propelled; (e) mine, quarry or oil field; (f) plantation; (g) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale; and (h) establishment in which any work relating to the construction, development or maintenance of building roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

The Act does not apply to wages payable in respect of workers drawing on the average rupees one thousand a month or more.

### Definition of "Wages"

The term "wages" has been defined as all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes the following:

- (a) any remuneration payable under any award or settlement between the parties or order of a court,
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period,
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name),
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made, and

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force. The following do not come under the definition of "wages".

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; and
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-head (d) above.

### **Responsibility for Wage Payment**

Every employer is ordinarily responsible for payment of wages to persons employed by him. However, the manager of a factory is responsible for such payment in case of persons employed in the factory otherwise than by a contractor. In case of persons employed in industrial establishments (otherwise by a contractor), the persons responsible to the employer for the supervision and control of the industrial establishment and in case of persons employed upon railways (otherwise than in factories and by a contractor), the person nominated by railway administration for the local area are responsible for payment of wages. [Sec. 3].

### **Fixation of Wage Period and Time of Payment of Wages**

A person responsible for payment of wages has to fix wage periods in respect of which such wages are payable, but no wage period is to exceed one month. [Sec. 4].

### **Time of Payment of Wages**

The wages of every person employed upon or in any railway, factory or industrial establishment upon or in which less than one thousand persons are employed have to be paid before the expiry of the seventh day after the last day of the wage period in respect of which wages are payable. Where one thousand or more persons are employed, wages are to be paid before the expiry of the tenth day after the last day of the wage period. However, in the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, has to be paid before the expiry of the seventh day from the day of such completion. In case the employment of any person is terminated by or on behalf of the employer, the wages earned by him have to be paid before the expiry of the second working day from the day on which his employment is terminated. Where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than the weekly or other recognised holiday, the wages earned by him have to be paid before the expiry of the second day on which his employment is so terminated. Every such payment has to be made on a working day. The State Government is empowered to make exempting orders subject to specified conditions. [Sec. 5].

### **Payment in Legal Tender**

All wages are to be paid in current coins or currency notes or both. Payment by cheque on the worker's written authorisation is also permissible now.

### **Authorised Deductions**

The Act requires the payment of wages free from any deductions except those authorised under it. The permissible deductions under the Act are discussed below.

#### **(i) *Deductions for fines***

Deductions with respect to fines are authorised under the Act but several conditions have to be fulfilled before they are made. In the first place, fine can be imposed on any employed

person only in respect of such acts and omissions on his part which have been specified by notice after the previous approval of the State Government or of the prescribed authority. The notice specifying such acts and omission has to be exhibited in the prescribed manner on the premises in which the employment is carried on. Secondly, no fine is to be imposed on any employed person until he has been given an opportunity to show cause against the fine. A procedure may also be prescribed for the imposition of fines. Thirdly, no fine is to be imposed on any person who has not attained his fifteenth year of age. Fourthly, the total amount of fine which may be imposed in any one wage-period on any employed person has not to exceed an amount equal to half an anna in the rupee of the wages payable to him in respect of that wage period. Fifthly, fine imposed on any employed person is not recoverable from him by instalments or after the expiry of sixty days from the day on which it was imposed, and every fine is to be deemed to have been imposed on the date of the act or omission in respect of which it was imposed. Lastly, all fines and realisations have to be recorded in a prescribed register and all such realisations have to be applied only to purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority [Secs. 7-8].

(ii) *Deductions for absence from duty*

The Act also authorises deductions with respect to absence from duty. Such deductions can be made only on account of the absence of an employed person from the place or places where he is required to work in accordance with the terms of his employment. The amount of such deduction is not to exceed the wage for actual period of unauthorised absence. If ten or more persons acting in concert absent themselves without due notice and without reasonable cause, such a deduction for absence from duty may include such amount not exceeding their wages for eight days as may by any such terms be due to the employer in lieu of due notice as required under the terms of contract of employment. An employed person is deemed to be absent from the place where he is required to work if, although present in such place, he refuses in pursuance of a stay-in-strike or for any other unreason-

able cause to carry out his work. [Secs. 7-9].

(iii) *Deductions for damage or loss*

Deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default are also permissible under the Act. However, the amount of such deduction has not to exceed the amount of the damage or loss caused to the employer. Such a deduction is not to be made until the employed person has been given an opportunity of showing cause against the deduction. All the deductions and realisations have to be recorded in a prescribed register. [Secs. 7, 10].

(iv) *Deductions for services rendered*

Deductions may also be made for house accommodation supplied by the employer and for such amenities and services supplied by the employer as the State Government may authorise. Deductions for the services rendered can be made only when an employed person has accepted the house accommodation, amenity or service as a term of employment. The amount of such deductions has not to exceed the value of the house accommodation, amenity or services supplied. The State Government is empowered to prescribe conditions subject to which deductions for services can be made. [Secs. 7, 11].

(v) *Deductions for recovery of advances or for adjustment of overpayment of wages*

Deduction for recovery of advances or for adjustment of overpayments of wages are also permissible under the Act. However, the recovery of an advance of money given before employment began has to be made from the first payment of wages in respect of a complete wage period but no deduction has to be made for advances for travelling expenses. The recovery of advances of money given after employment began and of wages not already earned is to be subject to conditions prescribed by the State Government. [Secs. 7, 12].

(vi) *Deductions for recovery of loans*

The Act authorises deductions for recovery of loans made

from any fund constituted for the welfare of labour subject to the rules framed by the State Government regulating the extent to which such loans may be granted and the rate of interest payable on the loans. [Secs. 7, 12A].

(vii) Deductions of income-tax payable by the employed person. [Sec. 7].

(viii) Deductions required to be made by the order of a court or other authority competent to make such order. [Sec. 7].

(ix) Deductions for subscription to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 applies or any recognised provident fund as defined in section 58A of the Indian Income-tax Act, 1922 or any provident fund approved in this behalf by the State Government during the continuance of such approval. [Sec. 7].

(x) *Deductions for payments to co-operative societies and insurance scheme*

The Act further authorises deductions for payments to co-operative societies approved by the State Government or any officer authorised by it; or to a scheme of insurance maintained by the Indian Post Office; or for payment, on written authorisation of the employed person, of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme. These deductions are to be subject to conditions imposed by the State Government. [Secs. 7, 13].

(xi) Deductions for payment of insurance premia on Fidelity Guarantee Bonds. [Sec. 7].

(xii) Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes. [Sec. 7].

(xiii) Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares,

freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise. [Sec. 7].

(xiv) Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default. [Sec. 7].

The total amount of deductions in any wage period is not to exceed 75 per cent of wages in case of deductions for payments to co-operative societies, and 50 per cent in other cases. Where the total deductions exceed the percentages noted above, the excess may be recovered in the prescribed manner. However, the employer is authorised to recover from the wages of the employed person or otherwise any amount payable by such person under any law in force other than the Indian Railway Act, 1890.

### **Claims out of Deductions from Wages or delay in Payment of Wages and Penalty for Malicious or Vexatious Claims**

The State Government is empowered to appoint officers to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of the wages of persons employed or paid in that area. Authorities which may be appointed to hear and decide the claims arising out of deductions from the wages or the delay in the payment of wages include: a presiding officer of a Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; a Commissioner for Workmen's Compensation; or other officer with the experience of a judge of a civil court or as a stipendiary magistrate. Applications in this respect can be made by the person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under the Act or any other person acting with the permission of the authority appointed for this purpose. Such an application has to be made within twelve months from the date on which the deduction from wages was made or from the date on which the payment of the wages was due to be made. Applications may be admitted after

twelve months if the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

On receiving an application, the authority appointed for this purpose is required to hear the applicant and the employer or other person responsible for payment of wages or to give them an opportunity of being heard. He may also conduct inquiries into the matter. In case the employer or other person responsible for payment of wages is held liable, the authority is required to direct him the refund of the amount deducted or the payment of the delayed wages together with the payment of such compensation as the authority may think fit. Such compensation is not to exceed ten times the amount deducted in case of unauthorised deductions and twenty-five rupees in case of delay in payment.

In case the authority is satisfied that the delay was due to a bona fide error or bona fide dispute as to the amount payable to the employed person or due to the occurrence of an emergency, or the existence of exceptional circumstances (so that the person responsible for the payment of wages was unable, though exercising reasonable diligence to make prompt payment) or the failure of the employed person to apply for or accept payment, payment of compensation in case of delayed wages is not allowed. If such a claim is simply of malicious or vexatious nature, the authority may impose a fine not exceeding rupees fifty on the person presenting the application and it has to be paid to the employer or other person responsible for the payment of wages. Where there is any dispute as to a person being the legal representative of an employer or an employed person, the decision of the authority on such dispute is final. When the authority or court is unable to recover such amount from any person (other than employer) responsible for payment of wages, the authority may recover the amount from the employer of the employed person concerned. [Sec. 15].

A single application may also be made on behalf or in respect of any number of employed persons belonging to the same unpaid group. The authority may deal with any number of separate pending applications together. [Sec. 16].

Every authority appointed for this purpose has all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of taking evidence and of enforcing the attendance of

witnesses and compelling the production of documents. [Sec. 18].

### **Conditional Attachment of Property of Employer**

The authority empowered to decide claims of deductions or delay in payment or the appellate court may direct the attachment of property of an employer or other person if it is satisfied that he is likely to evade payment of any amount that may be directed to be paid. Such an attachment can be made only after giving the employer or the person concerned an opportunity of being heard. [Sec. 17A].

### **Contracting Out**

Any contract or agreement, whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by the Act is null and void insofar as it purports to deprive him of such right. [Sec. 23].

### **Registers, Records and Notices**

Every employer is required to maintain such registers and records giving particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from the wages, the receipts given by them and such particulars and in such form as may be prescribed. The registers and records required to be thus maintained are to be preserved for a period of three years after the date of the last entry made. [Sec. 13A].

The person responsible for payment of wages in a factory is required to display the prescribed abstract of the Act and the rules in English and in the language of the majority of the persons employed in the factory. [Sec. 15].

### **Inspectors**

An Inspector of Factories appointed under the Factories Act, 1948 is an Inspector for the purposes of the Act in respect of all factories within the local limits assigned to him. The State Government may appoint Inspectors in respect of persons employed upon a railway, and may also appoint such other persons as it thinks fit to be Inspectors for the purposes of the Act. An

Inspector is empowered to: (a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of the Act or rules made thereunder are being observed; (b) enter, inspect and search any premises of any railway, factory or industrial establishment at any reasonable time for the purpose of carrying out the objects of the Act; (c) supervise the payment of wages to persons employed upon any railway or in any factory or industrial establishment; (d) enquire by a written order, the production of any register or record maintained in pursuance of the Act and take statements of any persons which he may consider necessary for carrying out the purposes of the Act; (e) seize or take copies of such registers or documents or their portions as he may consider relevant in respect of an offence under the Act which he has reason to believe has been committed by an employer; and (f) exercise such powers as may be prescribed. No person is, however, to be compelled to answer any question or make any statement tending to incriminate himself. Every Inspector is deemed to be a public servant within the meaning of the Indian Penal Code. Every employer is required to afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination, or enquiry necessary under the Act. [Sec. 14].

### Appeal

An appeal against the decision of an authority appointed under the Act may be made before the Court of Small Causes in a Presidency town, and before the District Court in other cases. Such an appeal can be made by the employer or other person responsible for payment of wages if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or other person a financial liability exceeding one thousand rupees. No such appeal is, however, to lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against. An appeal by an employed person or a legal practitioner or an official of a registered trade union authorised by the employed person or an Inspector under the Act or other person permitted to do can be made if the total amount of wages

claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs exceeds fifty rupees. An appeal may also be made by a person directed to pay a penalty on account of malicious or vexatious nature of an application for claims. The District Court or the Court of Small Causes may submit any question of law for the decision of the High Court. [Sec. 17].

### **Procedure in the Trial of Offences**

No court is to take cognizance of a complaint against any person for an offence pertaining to time of wage payments and authorised deductions (excepting that concerning payment on a working day, maintenance of records of fines and their expenditure, and making of entry of deductions for damages or loss) unless an application in respect of the facts constituting the offences has been presented (under Sec. 15) and has been granted wholly or in part, and the authority or court has sanctioned the making of the complaint. Before giving sanction for making a complaint against any person for the offences noted above, the authority or court must give the person an opportunity of showing cause. Such a sanction is not to be granted if the person satisfies the authority or the court that his default was due to: (a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or (b) the occurrence of an emergency, or the existence of exceptional circumstances, so that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or (c) the failure of the employed person to apply for or accept payment. Besides, no court is to take cognizance of a contravention of the provisions pertaining to fixation of wage-periods, payment of wages in current coin or currency notes, or the rules made under the Act except on a complaint made by or with the sanction of an Inspector. Similarly, a court can take cognizance of an offence pertaining to maintenance of records and registers, production of informations, or obstructing an Inspector in the discharge of his duties, etc. only when a complaint has been made by or with the sanction of an Inspector. [Sec. 21].

## Bar of Suits

No court is authorised to entertain any suit for the recovery of any deduction from wages insofar as the sum so claimed: (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that section or of an appeal under section 17, or (b) has formed the subject of a direction under section 15 in favour of the plaintiff, or (c) has been adjudged in any proceeding under section 15, not to be owed to the plaintiff, or (d) could have been recovered by an application under section 15. Besides, no suit, prosecution or other legal proceeding is to lie against the government or any government officer for anything which is done or intended to be done in good faith under the Act. [Sec. 22].

## Penalties

Contravention of the provisions pertaining to time of wage payments, and authorised deductions (except those concerning payment on a working day, and maintenance of records of fines and their expenditure, and making of entry of deductions for damage or loss) by a person responsible for payment of wages is punishable with a fine which may extend to five hundred rupees. Offences pertaining to fixation of wage periods, payment on working day, payment in current coin or currency notes, maintenance of register for fines and their expenditure, and making of entry of deductions for damage or loss and display of notice of abstracts of the Act are punishable with fine which may extend to two hundred rupees. Failure to maintain required register or record, wilful refusal to furnish required informations or return, furnishing of false information or return, refusal to give correct answer to a question necessary for obtaining any information, wilful obstruction of an Inspector in the discharge of his duties, refusal to an Inspector any reasonable facility for making any entry, examination, supervision, or enquiry and refusal to produce any register demanded by an Inspector, are punishable with a fine which may extend to five hundred rupees. If a person has been convicted of an offence punishable under the Act is again guilty of an offence involving contravention of the same provision, he is punishable on a subse-

quent conviction with an imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both. If a person fails or wilfully neglects to pay wages of any employed person fixed by the authority, he is punishable with additional fine which may extend to fifty rupees for each day for which such failure or neglect continues. [Sec. 20].

### **Power to Make Rules**

The State Government is empowered to make rules to regulate the procedure to be followed by the authorities and courts, and for the purpose of carrying into effect the provisions of the Act. In making any such rule, the State Government may provide that contravention of the rule shall be punishable with a fine which may extend to two hundred rupees. All rules made under the Act have to be subject to previous publication. The rules made by the Central Government require to be confirmed by the Parliament.

## **B. MINIMUM WAGE LEGISLATION**

### **Objectives of State Regulation of Wages**

A potent objective of legislation relating to wages is the regulation and fixation of wages. Although prior to the State intervention in the matter it was accepted that free bargaining between individual workmen and their employers would result in fixation of such wage rates which would satisfy both, many inquiries revealed that widespread exploitation of women and child labour existed in those industries which were generally carried on a small-scale and, in many cases, even in the homes of the employers. In such industries, the workers did not have and do not have even now, strong organisations to protect them against the pressures exerted by the employers. Strong public opinion, however, gradually forced the State to adopt legislation for the fixation of minimum wages in such industries.

As early as 1896, the State of Victoria (Australia) adopted a legislation to protect workers employed in certain specially sweated trades including: boot-making, baking, shirt-making, clothing, under-clothing and furniture manufacture. Great Britain followed suit

by enacting the Trade Boards Act in 1909. In the U.S.A. also, a number of States adopted legislative measures after 1912 for the fixation of minimum rates of wages, particularly for women and minors employed in various occupations and trades. A similar protective legislation i.e. the Minimum Wages Act was adopted in India in 1948.

The purpose of all these minimum wage laws was to prevent the exploitation of labour and payment of unduly low wages in those industries where workers were least organised and where employment of women workers and children predominated. It was realised that wages in these industries or occupations were so low that workers engaged therein could not earn enough to meet even the bare necessities of life though they might be continually employed. The fixation of minimum wages in these industries or occupations and the imposition of legal obligation on the employer to pay the wage rate so fixed have gone a long way towards mitigating the sufferings and hardship of labour. Such minimum wage laws have also led to a marked amelioration in other working conditions also.

Another objective of laws regulating the quantum of wages is to fix just and fair wages taking into account the circumstances prevailing in the industries concerned and the economy as a whole so as to avoid industrial disputes. This objective of promoting industrial peace found expression in the enactment of a series of laws in different countries providing for machineries either generally for the settlement and prevention of industrial disputes or exclusively for determining wage rates alone. The compulsory conciliation and adjudication machinery created under various labour laws in New Zealand, Australia and India as well as the tripartite Wages Councils set up in Great Britain may be cited as examples. In India, ever since the inception of the Second Five Year Plan, there has been a marked tendency to get wage-differences resolved through Wage Boards constituted by the Government of India on an ad hoc basis.

At times, the State intervenes to regulate the quantum of wages to control inflationary pressure as happened during the last world war. For example, in the U.S.A., where wages are normally determined on the basis of free collective bargaining between labour and management, the government had to establish a Wage

Stabilisation Board during the war to watch and control the working of collective bargaining in the field of wages. Similar steps were also taken in Great Britain.

Occasionally, the State has also regulated wages for maintaining the purchasing power of the wage-earners and thereby speeding up the pace of economic recovery. Thus, during the period of the Great Depression in the U.S.A., the N.I.R.A. adopted a policy of wage increase on the assumption that such a measure would increase the purchasing power of the nation, and thereby enlarge production and ultimately accelerate the pace of economic recovery.

Finally, the most comprehensive object of State regulation of wages which is finding expression in a large number of countries to-day even in the capitalist societies, not to speak of the socialist ones, has been the pursuit of a national income distribution policy and using the wage policy as an instrument of planned economic development.

Thus, in summary it may be said that the State regulation of the quantum of wages seeks to achieve the following main objectives:

- (1) Prevention of sweating and poverty arising from unduly low wages;
- (2) Fixation of just and fair wages for preventing industrial disputes;
- (3) Control of inflationary pressures;
- (4) Raising purchasing power with a view to speeding up the pace of economic recovery; and
- (5) Wage regulation as a part of a national-income distribution policy and programmes of planned economic development.

#### MINIMUM WAGE LEGISLATION IN INDIA

The necessity for fixing minimum rates of wages was realised in India as early as the beginning of the present century but no concrete measures were adopted for long. The question of fixation of minimum rates of wages was also considered by the Royal Commission on Labour which, in its report submitted in 1931, recommended making investigations in respect of the fixation of minimum rates of wages in small industries like bidi making, wool cleaning, mica works, shellac manufactory, and tanning. It also

recommended the establishment of a minimum-wage fixing machinery in these industries and the adoption of necessary legislation. The Commission further suggested setting up of a Statutory Wage Board for fixing minimum wages in plantations of Assam.

A few Labour Enquiry Committees like Cawnpore Labour Enquiry Committee, Bombay Textile Labour Enquiry Committee, Bihar Labour Enquiry Committee, C.P. and Berar Textile Labour Enquiry Committee and U.P. Labour Enquiry Committee set up by the Provincial Governments also made thorough investigations in respect of the wage levels of workers engaged in different types of industries. All these committees favoured the fixation of minimum wages in different industries and employment. Later, the Labour Investigation Committee known as Rege Committee, appointed by the Government of India in 1944, also made investigations in respect of wages and earnings in industrial employments and submitted a Main Report and 35 ad hoc Surveys. The Report and Surveys revealed the existence of low levels of wages for almost all categories of workers employed in different industries. The Committee was of the view that "a little or nothing has been done by the principal industries in this country to revise in upward direction the basic wages of their operatives except where the employers have been forced either by the government or by labour."

The question of fixation of minimum rates of wages was also considered by the Standing Labour Committee and the Fifth Labour Conference in 1943. The fourth meeting of the Standing Labour Committee and the sixth meeting of the Indian Labour Conference considered the matter again in 1944. These committees and conferences recommended statutory fixation of minimum rates of wages and the establishment of wage fixing machinery in certain industries. In the light of the recommendations of these committees and conferences, the Government of India introduced a Bill in the Legislative Assembly in 1946, which was passed on the 9th February, 1948 and the Act came into force from the 15th March of the same year.

#### THE MINIMUM WAGES ACT, 1948

The Minimum Wages Act, 1948 is the first labour legislation

in the country dealing with the fixation of minimum rates of wages for workers employed in different sweated industries including agriculture.

### Scope

The Act empowers the State and the Central Governments, as the case may be, to fix minimum rates of wages in respect of workers employed in the following industries or employment:

- (1) woollen carpet making or shawl weaving establishment;
- (2) rice mill, flour mill or dal mill;
- (3) plantation (any estate which is maintained for the purpose of growing cincona, rubber, tea or coffee);
- (4) tobacco (including bidi making) manufactory;
- (5) oil mill;
- (6) local authority;
- (7) road construction or in building operations;
- (8) stone breaking or stone crushing;
- (9) lac manufactory;
- (10) mica works;
- (11) public motor transport;
- (12) tanneries and leather manufactory; and
- (13) agriculture, which includes "any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry...."

The Act empowers the appropriate government to extend the application of the Act to any industry where fixation of minimum rates of wages is considered necessary.

### Fixing of Minimum Rates of Wages

The Act empowers the appropriate government to fix minimum rates of wages for time work or for piece work and also a minimum rate of remuneration as a guaranteed time rate (to apply in the case of employees employed on piece work) and minimum rate of wages for overtime work.

Different minimum rates of wages may be fixed for different scheduled employments, different classes of work in the same

scheduled employment, adults, adolescents, children and apprentices, and for different localities. The rates may also be fixed by the hour, by the day or by any prescribed longer wage period.

Any minimum rate of wages fixed or revised by the appropriate government may consist of: (a) a basic wage rate and a cost of living allowance, or (b) a basic rate with or without the cost of living allowance and the cash equivalent of the concession in respect of supplies of essential commodities at concession rates, or (c) an all-inclusive rate. The cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concession rates have to be computed by the competent authority and intervals for such computation have to be fixed in accordance with the direction of the appropriate government. [Secs. 3-4].

### **Procedure for Fixing Minimum Rates of Wages**

The Act provides for two distinct procedures for the fixation of minimum rates of wages. Under the first, the appropriate government may appoint a Committee, and Sub-committees for different areas (for assisting the Committee in its deliberations) to hold enquiries and to make advice on the question of wage-fixation. On receipt of the recommendations of the Committee, the appropriate government is required to fix minimum rates of wages in respect of the employment concerned by making notification in the official gazette. Under the second procedure, the appropriate government may by notification in the official gazette publish its own proposals of minimum rates of wages for information of persons likely to be affected, and specify a date, not less than two months from the date of notification, on which the proposals will be taken into consideration. The appropriate government, after considering all representations thus received, may fix minimum rates of wages in respect of the employment by making notification in the official gazette. The minimum rates of wages fixed under either of the procedures are to come into force on the expiry of three months from the date of notification, unless the notification specifies a particular date. [Secs. 5, 10].

### **Revision of Minimum Rates of Wages**

For revising the minimum rates of wages, the appropriate

government is required to appoint Advisory Committees and Advisory Sub-committees to enquire into conditions prevailing in any scheduled employment and to advise it in respect of that employment. On receipt of the advice, the appropriate government is required to notify the revised rates in the official gazette. The revised rates of wages are also to come into force on the expiry of three months of the issue of the notification or on such date as is specified in it. [Secs. 5, 10].

### **Composition of Committees and Advisory Committees**

Each of the Committees, Sub-committees, Advisory Committees and Advisory Sub-committees is to consist of representatives of employers and workers, and independent persons nominated by the appropriate government. The number of employers' and workers representatives is to be equal, but the number of independent persons is not to exceed one-third of the total number of members. One of the independent members is to be appointed as the Chairman. [Sec. 9].

### **Advisory Boards and Central Advisory Board**

The Act also provides for the setting up of Advisory Boards in the States, and a Central Advisory Board at the Centre. Both the Boards are to consist of equal number of representatives of employers and employees in the scheduled employments, and independent persons not exceeding one-third of the total number of members. One of the independent members is to be appointed as the Chairman by the State Government in case of the Advisory Board, and by the Central Government in case of the Central Advisory Board. The main function of the Advisory Board is to coordinate the work of Committees, Sub-committees, Advisory Committees and Advisory Sub-committees in the State. The Central Advisory Board is to advise the Central and State Governments in the matter of fixation and revision of minimum rates of wages and other connected matters, and to coordinate the work of Advisory Boards. [Secs. 7, 9].

### **Mode of Payment**

The Act provides for the payment of fixed minimum wages in cash. However, where the system of wage payment in kind is

prevalent, the appropriate government may authorise the payment of wages partly in kind. It may also authorise the provision of supply of essential commodities at concessional rates. The cash value of wages in kind and rates of concessions are to be estimated in a manner prescribed by the appropriate government. Where no minimum piece-rate has been fixed, the employer is required to pay at not less than the minimum time rate. Where an employee is required to do two or more classes of work, he is entitled to minimum fixed rate of wage for each class of work separately. [Secs. 11, 17].

### **Hours for Normal Working Day, Overtime Rate and Wage for Weekly Rest**

The appropriate government is also empowered to fix the normal hours of work for a working day including one or more specified intervals. It may also provide for a weekly rest and remuneration with respect to the day of rest. The remuneration for a day of rest is not to be less than the overtime rate, the actual amount of which is to be determined by the appropriate government. In all the industries covered under the Act, where the Factories Act 1948 is in operation, the overtime rate is double the fixed rate of wages. The overtime rate, in all other cases, is not to be less than what has been provided in other labour laws in operation in the scheduled employments.

If an employee is required to work for a period less than the prescribed normal working day, he is entitled to receive wages in respect of work done by him on that day for a full normal day in accordance with conditions laid down by the government. But in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him work, he is not entitled to receive wages for a full working day. [Secs. 14-16].

### **Claims**

Claims arising from the payment of less than the minimum rate of wages may be heard and decided by the Commissioner for Workmen's Compensation or other officer with experience of a Judge of a civil court or a Stipendary Magistrate to be appointed

as authorities to entertain such cases under the Act. Appointment of these authorities is to be notified by the appropriate government by making notifications in the official gazette.

An application for a claim may be submitted by the employee himself or any legal practitioner or any official of a registered trade union authorised by the employee to act on his behalf or any Inspector or any person acting with the permission of the authority empowered to hear and decide the cases of claims. Every application is to be made within six months from the date on which the minimum wages are payable but applications made after such period may also be entertained if he satisfies the authority that "he had sufficient cause for not making the application within such period."

A single application may be presented by any number of employees but the maximum compensation which may be awarded is not to exceed ten times the aggregate amount of the excess withheld by the employer. The authority may also deal with any number of separate pending applications taking them as a single application.

The authority, after hearing the application, may direct the payment of amount withheld by the employer and may also order for payment of compensation not exceeding ten times the amount of such excesses withheld by the employer. In case the authority is satisfied that the application is either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

Every such authority is vested with all the powers of a civil court under the Code of Civil Procedure for taking evidence and of enforcing the attendance of witnesses and compelling the production of documents. Every such authority is to be deemed to be a civil court for all the purposes of Section 195 and Chapter XXV of the Code of Criminal Procedure 1898. [Sec. 20].

### **Exemption of Employer from Liability in Certain Cases**

If an employer is charged with an offence he may make complaint that the actual offender is any other person and if he proves to the satisfaction of the court that he used due diligence to enforce the provisions of the Act, and that the other person committed the offence without his 'knowledge, consent or conni-

vance', that other person is to be convicted of the offence and liable to like punishment as if he were the employer and the employer has to be discharged. [Sec. 23].

### Bar of Suits

No court is authorised to entertain any suit for the recovery of wages if the sum so claimed forms the subject of claims under this Act and has been submitted by or on behalf of the plaintiff or has been decided in favour of or against the plaintiff or could have been recoverable by an application under this Act. [Sec. 24].

### Exemptions and Exceptions

The appropriate government is empowered to make direction that the provisions of the Act will not apply in the case of disabled employees. It may also make exemptions from any or all the provisions of the Act with respect to any class of employees employed in the scheduled employment or any locality after making notifications in the official gazette. Such exemptions have to be made in accordance with special reasons considered by the government to be fit for making exemptions. Where workers receive wages higher than those fixed under the Act, the appropriate government may also make exemptions from the operation of any or all provisions of the Act.

The Act, however, does not apply in respect of wages payable by an employer to a member of his family who is living with him and is dependent on him. An employer's family includes 'his or her spouse, or child, or parent or brother or sister'. [Sec. 26].

### Contracting Out

Any contract or agreement whether made before or after the commencement of the Act, in accordance of which, an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concessions accruing to him under the Act is null and void insofar as it leads to a reduction of minimum rate of wages fixed under the Act. [Sec. 25].

## **Registers and Records**

Every employer is required to maintain suitable records and registers providing particulars of employees, work performed by them, wages paid, and other matters as prescribed by the government. Notices containing prescribed particulars have to be exhibited in the prescribed form and prescribed manner in the factory, workshop or a place where the employees in the scheduled employment are employed. In case of outworkers, the notice has to be exhibited in such factory, workshop or place which may be used for giving out work to them. [Sec. 18].

## **Penalties and Procedure**

An employer, who pays to any employee less than the amount due to him under the provisions of the Act or infringes any order or rules made in connection with fixation of hours for a normal working day, is punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. An employer who fails to maintain a register or record required to be maintained under the Act is punishable with a fine which may extend to five hundred rupees.

No court is authorised to take cognizance of a complaint against any person for an offence concerning payment of less than the minimum rates fixed under the Act or payment of less than the minimum due to an employee, or infringement of an order or rules made under the Act, unless an application in respect of the facts constituting the offence has been made, and has been granted wholly or partly, and the authority has sanctioned the making of the complaint. The complaint must be made within one month of the grant of sanction. Besides, no court is to take cognizance of an offence pertaining to maintenance of a register or record required under the Act, except on a complaint made by or with the sanction of an Inspector. Such a complaint must be made within six months of the date on which the offence is alleged to have been committed. [Sec. 22].

## **Power of the State Government to Add to the Schedule**

The appropriate government is empowered to add to either

Part of the Schedule any employment in respect of which it is of the opinion that minimum rates of wages should be fixed under this Act. It is, however, required to notify its intention to do so in the official gazette at least three months before making addition in the Schedule. [Sec. 27].

### **Power of the Central Government to give Direction**

The Central Government is empowered to give directions to a State Government with respect to carrying into execution of the Act in the State. [Sec. 28].

### **Power of the Central and State Governments to Make Rules**

The Central Government may make rules prescribing the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in the membership and the quorum necessary for the transaction of business of the Central Advisory Board. The appropriate government is empowered to make rules for carrying out the purposes of the Act subject to the condition of previous publication by notification in the official gazette. [Secs. 29-30].

### **AN APPRAISAL**

The Act is a laudable measure and can be utilised to confer benefits upon thousands of ill-organised workers employed mostly in small-scale industries. By now, the State Governments have covered almost all of the scheduled industries by fixing minimum rates of wages. Some of the State Governments have gone to the extent of adding some new industries to the Schedule e.g. the Government of Bihar has included the cold storage industry, cinema houses, hotels, automobile engineering, etc.

One primary drawback of this enactment is that it lays no criteria which will guide the government and the Minimum Wage Committees in fixing minimum wage rates. The various Committees have to find for themselves and to develop their own standards with the result that in the same locality there may be different rates of wages for similar jobs in different industries. The provision of the Minimum Wage Advisory Board both at the State and

the Central levels is intended to mitigate the confusion arising from lack of uniform criteria, still the confusions and disuniformities have not been eliminated. The recommendation of the 15th Labour Conference that various wage fixing machineries should take into account the needs of the workers in recommending wage rates has provided a criterion, no doubt, but experience indicates that the achievement of a need-based minimum wage is still a distant goal even in the highly organised and developed industries, not to speak of the sweated ones. This omission of the guidelines in the light of which the minimum rates of wages are to be fixed is a serious lacuna when the position is compared with similar laws passed in other countries particularly, the U.S.A., Australia and New Zealand, where the laws themselves have prescribed the principles for the fixation of minimum wages.

The inclusion of agriculture in Schedule II of the Act is a very progressive step, but it is well known that the fixation of minimum wage for workers engaged in agricultural operations in India is beset with numerous pit-falls and difficulties. It is because of these handicaps that none of the State Governments has been wholly successful in fixing minimum rates of wages for agricultural operations. Even where wages have been fixed, their payment is far off from reality. The minimum rates exist on paper only.

The pitiable conditions of the agricultural workers naturally excite sympathy. But sympathy for a cause should not make one blind to the reality of the situation. Having such an Act for the fixation of minimum wages for agricultural workers may be a source of satisfaction to the framers of the Act, but it has hardly succeeded in bringing about any notable improvement in the wages of the agricultural workers. On the contrary, the Second Labour Enquiry Committee's Report shows that in the period during which the Act has been in operation, wages and earnings in agriculture are determined more by economic factors than legal. That is why many of the western countries which have longer experience of minimum wage fixation in the sweated industries have been reluctant to include agriculture within the framework of a minimum wage legislation. In the U.S.A. the minimum wages laws have not included agriculture even till today though the country has a longer experience of fixing minimum wages in other industries. In Great Britain where the Trade Boards provided

for the fixation of minimum wages in the sweated industries since 1909 the inclusion of agriculture was postponed for a long time. It appears that India has rushed in where many others have feared to tread.

It may not be out of place to refer to the difficulties in fixation of minimum wages in agriculture in India. The first difficulty relates to the immense scale, wide area, and enormously large number of workers to be covered. The fixation of minimum wages for millions of workers scattered over 6 lakhs of villages and the enforcement of the minimum rates of wages so fixed requires a vast machinery which cannot be easily set up.

The second difficulty relates to the large number of small-sized farmers who are illiterate, who never maintain any records and who are in most cases no better than agricultural labourers.

The third difficulty relates to the multilateral relationship between agricultural employer and his employees. The farmer who employs workers is not merely an employer but, in many cases is also a money lender to his workers. The agricultural employer is a friend, philosopher, guide, and employer, all combined, to his workers. On numerous occasions the agricultural workers receive from their employers many benefits, donations, other financial as well as non-financial assistance which are complementary to the formal wages that the workers receive. An agricultural wage Inspector may tighten his grip over the farmer-employer and force him to pay the prescribed rate of wages—in case of representations from the workers. But how many workers dare to make such representations? Will not the farmer-employer—money lender, penalise the workers for making such protests?

Finally, the sanctity which customs and traditions of long standing have bestowed upon the agricultural wage rates is itself an impediment in the implementation of the law. The agricultural wage rates have acquired a sanction which is perhaps, stronger than the sanction of law. It is rare that agricultural wage rates are subject to the laws of supply and demand. That is why agricultural employees and workers prefer, in many cases, to abide by their customs and traditions, rather than by law. However, as an important point of the 20-point programme of the Prime Minister, the rigorous implementation of the Act is receiving the concentrated attention of all the State Governments.

## CHAPTER 17

### TRADE UNION LEGISLATION IN GREAT BRITAIN

Though legislation relating to combinations of workmen has undergone remarkable changes in Great Britain, a few distinct stages in the course of this legislative evolution can be perceived easily. In the first stage, legislation was regressive and aimed at suppressing any combination of workmen. The second stage is marked by a limited acceptance and toleration of these combinations so long as they pursued certain strictly limited aims and methods. The third stage is characterised by a general acceptance and recognition of trade unions.

#### EARLY MEASURES

There are historical evidences of workers' efforts to form combinations for the purpose of raising wages even before the Black Death pestilence. The attitude of the State was, however, hostile and ordinances were passed against concerted action of workmen. Thus, the servant workmen in cordwainery were forbidden in 1303 "to hold any meeting or make provision which may be to the prejudice of the trade and the detriment of the common people".<sup>1</sup> Later, the Ordinance of Labourers, 1349 and the Statute of Labourers, 1351 prohibited concerted efforts of workers to raise wage rates. A Statute of 1425 prohibited the annual congregation and confederation of masons. An Act passed in 1549 forbade any

1. J. Cunison, *Labour Organisation*, p. 27.

combination of workmen whose purpose was not to make or do their work except at a certain price or rate. These prohibitions and restrictions were in conformity with the social and economic philosophy of the feudal system then obtaining in the country and served the interests of the dominant class.

After the breakdown of the feudal system, the Statute of Apprentices was enacted in 1562, which provided for the appointment of Justices of Peace to settle disputes between workmen and masters by fixing hours of work and wages. As a result of the operation of the Statute of Apprentices, the impulse for combinations subsided till the second half of the seventeenth century. From then onwards, there was a considerable increase in such combinations but the employers made every effort to suppress them for which they could easily get the support of the government.

In 1662, the Court of Alderman in London gave a decision that "Journeymen may not by combination or otherwise excessively at their pleasure raise wages." Again in 1721, an Act was passed which aimed at prohibiting all contracts between journeymen tailors in certain parishes for the purpose of advancing wages or lessening hours of work and those who entered into such agreements were liable to imprisonment. However, as capitalism developed and industrial revolution gathered momentum, the efforts to combine were also intensified. In spite of the repressive measures, workmen combined on many occasions for increasing wages and reducing hours of work, as a result of which, even the regulation of wages by Justices of Peace fell into disuse. It was on account of a rapid growth of combinations of workmen that the Combination Act, 1799 was enacted which, for the first time, clearly defined the attitude of the State towards trade unions.

### **The Combination Acts of 1799 and 1800**

The Combination Acts of 1799 and 1800 forbade any combinations of workers for any purposes including obtaining higher wages, lessening hours of work, preventing or hindering any person from employing a person whom he wanted to employ and controlling any person from carrying on any manufacture, trade or

business. Any workman who entered into such a combination was liable to imprisonment. The result was that the workman had to rely solely on his individual bargain for protecting his interests, especially after the repeal of the Statute of Apprentices in 1813. Though the Combination Acts prohibited combinations of employers as well, in practice, no evidence of their prosecution for the violation of the Combination Acts is available.

### Trade Unions under Common Law

Apart from these statutes making trade unions illegal per se or rendering some of their practices illegal, the trade unions, throughout this period, suffered from the additional all-pervading legal disability of the Common Law under the doctrine either of criminal conspiracy or restraint of trade.<sup>2</sup> Under the Common Law, according to the doctrine of criminal conspiracy, a trade union could be declared an unlawful association either because its purposes were illegal or it resorted to illegal methods. A criminal conspiracy consists in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. Under the then prevailing legal notions, both the purposes of trade unions and the methods adopted were deemed to be unlawful. Attempts to raise wages or to reduce hours of work were unlawful because they were deemed to be in contravention of the declared public policy of the freedom of trade. Similarly, going on strike, picketing, and inducing people to go on strike were again supposed to be unlawful methods because they interfered with the freedom of trade and contract. Thus, the statutes and the Common Law completely constricted the formation and working of trade unions. The trade unions which escaped prosecution under the Common Law were suppressed under the statutes. It was well-nigh impossible for trade unions to function in a lawful manner; the Democle's sword constantly hung over them.

A gradual and grudging elimination of these restrictions began in the year 1824 when the Combination Acts of 1799 and 1800 were repealed and a new Act was passed. The process was largely completed by 1876.

2. For details, see Harry Samuels, *Trade Union Law*, pp. 25-48.

## Combination Acts, 1824 and 1825

Ever since the enactment of the Acts of 1799 and 1800, discontent prevailed among workmen and they made vigorous protests against their regressive provisions. Even outsiders did not remain indifferent to such a pertinent issue and leaders like Francis Hume and David Place started taking active interests in protecting the legitimate rights of workmen to form associations. Ultimately, the Acts of 1799 and 1800 were repealed by the Combination Act of 1824.

The Combination Act, 1824 brought about a radical change in the existing legislation. It not only repealed the earlier Combination Acts but also considerably reduced the scope of the ruthless repressions of trade combinations under the Common Law. Combinations were accepted under law and a set of rights was bestowed upon workmen. An idea of the essential features of the Act of 1824 can be gathered from the following remarks made by Dean Landis:

It repealed all the earlier combination laws and provided further that workmen combining to obtain advances in wages, to lessen their hours of work or to regulate the mode of carrying on the trade should not be subject to indictment and prosecution for conspiracy under Common Law or under Statute. Similar liberty was accorded combinations of masters. Persons, however, who used violence or threats or intimidation wilfully or maliciously to induce others to leave their work or not to accept work to accomplish other similar ends were still to be criminally punishable. Conspiracies to effect these ends by such means were also outlawed.

The Act of 1824 gave a fillip to combinations of workmen and there was an immediate outbreak of strikes in many parts of the country. As a result, the Combination Act, 1824 was amended in 1825. The preamble to the new Act stated, "Such combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them."<sup>3</sup> The preamble also proclaimed

3. Frank Tillyard, *The Worker and the State*, p. 271.

"It is expedient to make further provision as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers."<sup>4</sup> The Act imposed severe restrictions on the rights of workmen guaranteed under the Act of 1824. Workmen were given the right to combine for specified purposes like determination of wages or hours of work and enter into agreements with employers, but combinations for purposes other than those specified were out-lawed and their members could be prosecuted for criminal conspiracy under the Common Law. Offences which held the members of such combinations liable to imprisonment included violence, intimidation, molestation or obstruction for the following purposes:

- (a) forcing a person to leave his work;
- (b) forcing or inducing a person to belong to a trade union or to observe trade union rule; and
- (c) forcing an employer to alter his manner of conducting business or to limit the number of his employees.

Thus, a combination as such for determining wages and hours of work was no longer a criminal conspiracy, whereas, any unapproved action in the furtherance of such an objective was punishable as a criminal offence.

### The Molestation Act, 1857

Problems of combination and organised activities continued to be under the consideration of the Parliament which passed a new Act known as the Molestation Act in 1857. The Act provided that no workman or other person was to be deemed guilty of 'molestation' or 'obstruction' liable to any prosecution or indictment for conspiracy simply on his entering into an agreement with any other person for the purpose of fixing the rates of wages or for making efforts peacefully to persuade others to cease to work or abstain from work in order to obtain desired rates of wages or hours of work. The Act, however, did not authorise the breaking of any contract or an attempt to induce others to break a contract.

4. *Ibid.*

## THE TRADE UNION ACT, 1871

The relaxations given under the Acts of 1824 and 1857 helped the growth of trade unions and as a result, workers tried to improve their conditions by resorting to work-stoppages. However, such work-stoppages became so frequent that a Royal Commission on Labour was appointed in 1867 to review the whole position of trade unions and existing legislation relating to workers' combinations. Some of the observations of the Commission were that the law was uncertain in many respects and unequal in its application to employers and employees and unduly restrictive towards certain actions. The Commission recommended legalising of trade unions which were still illegal associations under the Common Law and gave a new definition of the term 'molestation'. On the basis of these recommendations, the Trade Union Act, 1871, "the first of a series of Statutes intended as a shelter under which trade unions can operate,"<sup>5</sup> was enacted.

### Definition of Trade Union

The Act defines a trade union as follows:

The term 'trade union' means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, *if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.* Provided that this Act shall not affect:

1. Any agreement between partners as to their own business;
2. Any agreement between and employer and those employed by him to such employment;
3. Any agreement in consideration of the sale of the good will of the business or of instruction in any profession, trade, or handicraft. [Sec. 23].

5. Horatio Vester and Anthony H. Gardner, *Trade Union Law and Practice*, pp. 5-6.

### **Immunity from Criminal Prosecution**

The Act clearly declares, "The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise." [Sec. 2].

### **Immunity from Civil Suits and Enforceability of Agreements**

The Act provides, "The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust." [Sec. 3]. Under this provision of the Act, the courts would have been bound to enforce such contracts by issuing injunctions or awarding damages for their breach. They might also have been called upon to enforce strikes and lock-outs, order the members of a union to cease work or an employer to refuse employment. In order to save courts from facing such situations the Act provided that certain agreements, although lawful, were not directly enforceable and proceedings were not to be brought to recover damages for their breach. These agreements were as follows:

- (1) Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed;
- (2) Any agreement for the payment of any person of any subscription or penalty to a trade union;
- (3) Any agreement for the application of the funds of a trade union:
  - (a) To provide benefits to members; or
  - (b) To furnish contributions to any employer or workman not a member of such trade union in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or
  - (c) To discharge any fine imposed upon any person by sentence of a court of justice; or
- (4) Any agreement made between one trade union and another; or

- (5) Any bond to secure the performance of any of the above-mentioned agreements. [Sec. 4].

## Registered Trade Unions

Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act, apply for registration to the Registrar of Friendly Societies. [Sec. 6]. To qualify for registration, a trade union must provide for the following particulars in its rules:

1. The name of the trade union and the place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.
3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurers, and other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union. [Schedule 1].

A trade union is not to be registered under a name identical with that by which any other existing trade union has been registered or so nearly resembling such name as to be likely to deceive the members or the public.

If the trade union has complied with the regulations concerning registration, the Registrar is required to register the trade union and issue a certificate of registration. The certificate, unless proved to have been withdrawn or cancelled, is deemed to be a conclusive evidence that the regulations of the Act with respect to registration have been complied with. [Sec. 13].

## Registered Office

Every registered trade union is required to have a registered office to which communications and notices may be addressed. Notice of the situation of the registered office, and of any change of address must be given to the Registrar. [Sec. 15].

## Annual Returns

A registered trade union is required to send annual returns to the Registrar setting out its property, income, expenditure, alterations in rules, new rules and changes of officers, etc. [Sec. 16].

A registered trade union is allowed to purchase or take upon lease land (not exceeding one acre), and to sell, exchange, mortgage or let it. [Sec. 7]. The real and personal estate belonging to a registered trade union is to vest in the trustees of the union. [Sec. 8]. The trustees of a registered trade union or other authorised officers of the union are empowered to bring or defend any action, prosecution, or complaint in any court of law, and to sue or be sued. [Sec. 9]. A trustee of a registered trade union is not liable to make good any deficiency which may arise in the funds of the trade union, but is liable for the money actually received by him. [Sec. 10]. The treasurer of a registered trade union is required to furnish accounts to the members or the trustees at such intervals as may be prescribed in the rules. [Sec. 11].

As a result of the passing of the Act of 1871, trade unions, which were hitherto considered a conspiracy and in restraint of trade, were recognised as a form of legal association. However, a few glaring defects in the Act were soon realised. In the first place, as the definition of trade union covered only "such combination as would have been unlawful if this Act had not been passed", the advantages of registration were only offered to the hitherto illegal unions and withheld from those which had managed to avoid illegality. Secondly, though a strike could not be considered a criminal conspiracy and in restraint of trade, it remained, in most cases, a conspiracy to coerce. Thirdly, the Act did not give any protection against the law of civil conspiracy and the employers could sue the trade union leaders to pay damages for the losses

incurred during strikes. Besides, as the objectives of a trade union were specified under the definition, the courts interpreted them as exhaustive and thus trade unions, in many cases, were not entitled to have additional objects not mentioned in the definition. It was on that basis that collection of funds for political purposes was subsequently declared illegal.

### **The Conspiracy, and Protection of Property Act, 1875**

In 1871, the Criminal Law Amendment Act was enacted which introduced amendments in the Criminal Law pertaining to violence, threats, molestation, etc., but workmen were not satisfied with the Act. As a result of their protests, another Act known as the Conspiracy and Protection of Property Act was passed in 1875. The Act provided, "An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime." [Sec. 3]. Thus the trade union leaders could plan and execute direct action in trade disputes and interfere with the freedom of trade of others without the fear of criminal proceedings for conspiracy unless the acts committed were themselves criminal offences.

### **THE TRADE UNION ACT AMENDMENT ACT, 1876**

The Trade Union Act Amendment Act, 1876 brought about minor changes in the Act of 1871. The Act modified the definition of trade union so as to include trade unions which were not unlawful at the Common Law. The term "trade union" now meant "any combination whether temporary or permanent, for regulating the relations between workmen and masters or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act (Act of 1871) had not been passed, have been an unlawful combination by reason of one or more of its purposes being in restraint of trade." [Sec. 16]. The Act dealt extensively with the

amalgamation, dissolution and change of name of trade unions, withdrawal and cancellation of certificates of registration and the rights of the minors to become members of trade unions.

### Position at the End of the 19th Century

As a result of the operation of the Acts of 1871, 1875 and 1876, trade unions were placed for about two decades from 1871 in a more secure position. There was an unprecedented increase in the number as well as membership of trade unions. A number of collective agreements were made and strikes conducted in a peaceful manner. The favourable effects of the Acts of 1871 and 1876 on the trade union movement were also noted by the Royal Commission on Labour in 1894. However, such a state of affairs did not continue for long as the employers, on many occasions, successfully approached the courts of law on grounds not foreseen by the framers of these Acts.

Thus a court held in 1893 that persuading men either to throw up their work without notice or from going into the employment of a particular master was a punishable offence.<sup>6</sup> In 1896 an employer was successful in obtaining an injunction from a Chancery Judge of the High Court to restrain picketing during strike. In deciding the case, the Judge observed, "picketing was in fact illegal watching or besetting."<sup>7</sup> Again, the House of Lords in the case *Quinn vs. Leathorn* pointed out in 1901 that an action by an individual only might not be actionable while that by two or more persons might be regarded as a civil offence.<sup>8</sup> Thus the old doctrine of conspiracy which was removed under the Act of 1875 could be used by an employer to get damages from his workers for doing in combination what they were authorised to do individually.

### The Taff Vale Case, 1901

So far, the funds of the trade unions were secure and could not be used for paying damages for loss caused to an employer

6. Frank Tillyard, *op. cit.*, p. 275.

7. *Ibid.*

8. *Ibid.*

by strikes. However, in the famous Taff Vale case, the House of Lords decided that such an immunity had not been conferred by law. In this case, the Taff Vale Railway Company sued the Amalgamated Society of Railway Servants in tort alleging that certain employees of the Company who were also the members of the Society, conspired to induce workmen to break their contracts and to interfere with the trade in the course of a strike. The House of Lords held that a trade union could be sued in respect of injuries purposely done by its authority and that a registered trade union could be sued in its registered name. As a consequence, the Amalgamated Society of Railway Servants had to pay heavy damages to the Company for the loss it had to sustain on account of the strike.

The decision aroused considerable resentment amongst trade unionists who demanded an immediate change in the law putting to an end the restraint imposed by the decision of the House of Lords. The trade unions felt that this decision had practically undone many of the gains that they had succeeded in securing after a long struggle and had endangered the very financial solvency of the trade unions. Henceforth, any employer could go to a court of law and claim damages from the trade unions and it would become well nigh impossible for a trade union to launch a successful strike which would not cause economic loss to the employer. Subsequently, a Commission was appointed in 1903 to enquire into the question of the law affecting trade combinations and trade disputes. The Commission recommended that, subject to certain safeguards, the trade unions should assume responsibility for their official actions. However, owing to a change in government, the recommendations of the Commission could not take the shape of law. An altogether different Trade Disputes Act was passed in 1906 by the new government which complied with the demands of the trade unions.

### **The Trade Disputes Act, 1906**

The Trade Disputes Act, 1906 reversed the Taff Vale decision, made trade unions immune from civil liability arising out of trade union activities, and gave them other concessions. The

relevant provisions of the Act are as follows:

- (1) An act done in pursuance of an agreement or combination by two or more persons shall, if done, in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable. [Sec. 1].
- (2) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is in interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills. [Sec. 3].
- (3) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court. [Sec. 4].
- (4) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working. [Sec. 2].

The Act defines 'trade dispute' as "any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

### Osborne Case, 1910

The Trade Union Acts, 1871 and 1876 had considerably helped the development of trade unions, which apart from performing economic and social functions, also spent their funds

on political objectives. The expenditure for political purposes was met out of the general funds and in many cases, compulsory contributions were also levied for such purposes. Thus the trade unions spent considerable amount in maintaining Parliamentary candidates. The pace of political activities was further accelerated after the Labour Party was set up by the Trades Union Congress in 1906. However, Osborne, the Secretary of the Wolverhampton branch of the Amalgamated Society of Railway Servants objected to payment to the political fund which the Society had set up and brought an action with a request to declare the fund illegal and to restrain the union from collecting or expending money for political purposes. The matter was referred to the House of Lords which held that the trade unions registered under the Trade Union Acts, 1871 and 1876 were not authorised to collect or administer funds for political purposes. Any rule which empowered a registered trade union to levy contributions from members for securing parliamentary representation was *ultra vires* and illegal. The decision was based on the principle that the definition of a trade union in the Acts of 1871 and 1876 was a limiting definition, and as such trade unions were not authorised to have any objects not specifically mentioned in the definition. In consequence, all political activities of trade unions were rendered illegal, and they were debarred from maintaining candidates in the Parliament or local bodies.

### **The Trade Union Act, 1913**

The Osborne judgement was severely criticised by trade-unionists who mobilised their resources to get it reversed. Ultimately, the Trade Union Act, 1913 was enacted making it lawful for the trade unions to engage in political activities and to spend their funds for those purposes.

The Act made the statutory definition of a trade union more flexible by providing:

- (a) The fact that a combination has under its constitution objects or powers other than statutory objects within the meaning of this Act shall not prevent the combination being a trade union for the purposes of the Trade Union Acts 1871 to 1906, so long as the combination is a trade union as

defined by this Act, and subject to the provisions of this Act as to the furtherance of political objects, any such trade union shall have power to apply the funds of the union for any lawful objects or purposes for the time being authorised under its constitution.

- (b) For the purposes of this Act, the expression 'statutory objects' means the objects mentioned in...the Trade Union Act Amendment Act, 1876, namely, the regulation of the relations between workmen and masters, or between workmen and workmen or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provision of benefits to members. [Sec. 1].
- (c) The expression 'trade union' for the purpose of the Trade Union Acts, 1871 to 1906, and this Act, means any combination, whether temporary or permanent, the principal objects of which are under its constitution statutory objects; provided that any combination which is for the time being registered as a trade union shall be deemed to be a trade union as defined by this Act so long as it continues to be so registered. [Sec. 2].

Under the Trade Union Act, 1913, the trade unions were thus allowed to perform functions other than those covered under 'statutory objects' so long as the latter remained 'principal objects'. The Registrar of the Friendly Societies was empowered to decide these cases and could withdraw the certificate of registration of any registered trade union "if the constitution of the union has been altered in such a manner that, in his opinion, the principal objects of the union are no longer statutory objects, or if in his opinion, the principal objects for which the union is actually carried on are not statutory objects." [Sec. 2]. A person aggrieved by the refusal of the Registrar to register a combination as a trade union or withdrawal of a certificate of registration could appeal to the High Court. An unregistered trade union could also apply to the Registrar for a certificate that the union was a trade union within the meaning of the Act. The Act authorised the trade unions to have political objectives and to engage in political activities. The authorised political activities included:

- (1) payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election; or
- (2) expenditure on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
- (3) expenditure on the maintenance of any person who is a member of Parliament or who holds a public office; or
- (4) expenditure in connection with the registration of electors or the selection of a candidate for Parliament or any public office; or
- (5) expenditure on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects within the meaning of this Act. [Sec. 3].

The Act, while preventing the general funds of the union being spent for the political purposes, authorised the trade unions to establish a separate political fund for the furtherance of political objectives. The trade unions could frame rules setting up the political fund and requiring the members to make contributions to the same. However, the rules of the trade unions authorising political objectives and establishment of the political fund were to be approved of by a majority of the members by ballot. Though the trade union rules could require the members to make contribution to the political fund, any member could object to making contributions to the political fund by giving a notice in the prescribed manner, and thus he could be exempted from contributing to the funds so long as his notice was not withdrawn. Such a member was, however, not to be excluded from any benefits of the union or placed in any respect either directly or indirectly under any disability as compared with other members of the union except in relation to the control or management of the political fund. Contribution to the political fund was not to be made a condition for admission to a trade union. An aggrieved member could complain to the Registrar of the Friendly Societies whose

decision was binding on all parties and which was without appeal, unremovable into any court of law, and unrestrainable by injunction.

### **The Trade Union (Amalgamation) Act, 1917**

The Trade Union (Amalgamation) Act, 1917 provided for conditions governing the amalgamation of trade unions. Amalgamation of two or more trade unions could be made only when "in the case of each or every such trade union, on a ballot being taken, the votes of at least fifty per cent of the members entitled to vote thereat are recorded, and of the votes recorded those in favour of the proposal exceed by twenty per cent or more the votes against the proposal." This was an amendment over the Act of 1876 which required the consent of not less than two-thirds of the members of each or every such trade union.

Consequent upon the amendments introduced in 1913 and 1917, the trade union movement in Great Britain constantly grew not only in respect of number and membership but also in power and influence. There was little change in the legal position of trade unions till 1927, though a few measures were adopted to deal with strike situations. Thus, the Police Act, 1919, which was enacted following a strike by the policemen, prohibited policemen from belonging to any trade union but they could join the Police Federation; the details in respect of its constitution, powers and functions were provided under the Act itself. Similarly, as a result of a strike in the mining industry in 1920, the Emergency Powers Act which was enacted the same year empowered the government to declare a state of emergency in case supply of certain specified services and commodities was threatened. Regulations could be made for "securing the essentials of life to the community." Though any breach of regulations was a punishable offence, workers were not deprived of the right to strike or "peacefully to persuade any other person or persons to take part in a strike".

### **THE TRADE DISPUTES AND TRADE UNIONS ACT, 1927**

The Trade Disputes and Trade Unions Act, 1927 was the direct outcome of the General Strike of 1926, which unnerved the

conservative government that was in power. The government feared that the strength, both political and economic, which the trade unions had gathered, could bring about a revolutionary change in the country through the weapon of the general strike. Therefore, it lost no time in enacting the Trade Disputes and Trade Unions Act, 1927 which severely restricted the rights of the trade unions that they had come to acquire after a long struggle. The Act made certain types of strikes illegal; restricted some of the methods commonly used by trade unions; limited the extent of their political fund; and debarred civil servants from joining trade unions or to affiliate their associations to industrial unions.

### **Illegal Strikes and Lockouts**

The Act declared the following two types of strike or lockout illegal:

- (1) A strike or lockout having any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers or the employers locking-out (as the case might be) were engaged;
- (2) A strike or lockout designed or calculated to coerce the Government either directly or by inflicting hardship upon the community. [Sec. 1(1)].

The Act also declared it illegal "to commence, or continue, or to apply any sums in furtherance or support of any such illegal strike or lockout." Thus political and sympathetic strikes were prohibited under the Act. [Sec. 1].

### **Right to Picket**

The right to picketing was restricted under the Act which provided, "It shall not be lawful for one or more persons, for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place...." Similarly, the Act prescribed in detail the acts which could be covered under 'intimidation' 'watching' or 'besetting'. [Sec. 3].

### **Political Fund**

With respect to political fund, the Act brought about a change

in the existing law by substituting "contracting in" for "contracting out" meaning thereby, that before a trade union could realise contributions for political fund from a member, a written authorisation in a prescribed form had to be obtained from him. So far, the trade unions were entitled to collect subscription for political fund unless a member gave notice in writing that he did not want to contribute to the political fund. This was called "contracting out" of the obligation to contribute to the political fund under the Act of 1913. On the contrary, under the Act of 1927, the trade unions could not collect any political levy from a member unless he indicated in writing, his desire to contribute. [Sec. 4]. That means, henceforth, no member was under any obligation to contribute to a political fund unless, he contracted in writing the obligation to do so. This has been called "contracting in" by members. This restriction on the right of the trade unions to impose political levy on the members threatened to limit severely the political activities of the trade unions. Therefore, the trade unions reacted vigorously against this provision. It was not until the second advent of the Labour Government in 1945, that this provision was modified and the position prevalent as the result of the 1913 Act was restored.

### **Organisations of Civil Servants**

The Act prohibited the civil servants from becoming members of any union having political objectives. They were also denied the right to affiliate their unions with industrial or political organisations. [Sec. 5].

### **Obligation of the Local and other Public Authorities**

The Act said, "It shall not be lawful for any local or other public authority to make it a condition of the employment or continuance in employment of any person that he shall or shall not be a member of a trade union, or to impose any condition upon persons employed by the authority whereby employees who are or who are not members of a trade union are liable to be placed in any respect either directly or indirectly under any disability or disadvantage as compared with other employees." Besides, it was not lawful "for any local or other public authority to make it a

condition of any contract made or proposed to be made with the authority or of the consideration or acceptance of any tender in connection with such a contract, that any person to be employed by any party to the contract shall or shall not be a member of a trade union." [Sec. 6].

### **The Societies (Miscellaneous Provisions) Act, 1940**

A few sections of the Societies (Miscellaneous Provisions) Act, 1940 deal with the amalgamation and transfer of engagements of trade unions. A trade union is entitled to transfer its engagements to another trade union but no transfer is to prejudice any right of any creditor of any trade union, party to the transfer of engagements. A transfer of engagements is to take effect only when: (a) the consent of not less than two-thirds of the members of the union transferring its engagements has been obtained and a notice of the application has been published in the gazette, and (b) the notice of the transfer has been registered by the Chief Registrar of Friendly Societies.

### **The Trade Disputes and Trade Unions Act, 1946**

The provisions of the Act of 1927, particularly those relating to "sympathetic strike" and "political fund" were widely opposed by the trade union movement. The Labour Party was also opposed to these provisions from the very beginning. When the Labour Party came in power in 1945, it took the first opportunity to initiate measures for amending the Act of 1927 and, consequently, the Trade Disputes and Trade Unions Act was enacted in 1946.

The Act of 1946 repealed the Trade Disputes and Trade Unions Act 1927, and subject to certain transitional provisions, restored the position existing before 1927. The transitional provisions which were included in the Schedule of the Act related to the details of the rules of a trade union and contributions to the political fund.

### **The Trade Unions (Amalgamation, etc.) Act, 1964**

The Trade Unions (Amalgamation, etc.) Act, 1964 introduced

certain amendments in the existing law relating to amalgamation, transfer of engagements, and alteration of the names of trade unions.

### **The Trade Disputes Act, 1965**

The Trade Disputes Act, 1965 was passed to counteract the decision of the House of Lords in the case of *Rookes v. Barnard* in 1964. While disposing of the case, the House of Lords held that a threat by persons that contracts of employment would be broken unless the employer conceded their demand was a threat to do something unlawful and constituted the tort of intimidation. Consequently, the persons concerned, when sued for damages for civil conspiracy, could not rely on the protection afforded by the Trade Disputes Act, 1906. The Trade Disputes Act, 1965 nullifies the decision by providing that the protection of the Trade Disputes Act, 1906 against action in tort is not to be lost simply because a person threatens the breach of contract of employment or threatens that he will procure another person to break such a contract.

### **Royal Commission on Trade Unions and Employers' Organisations**

A Royal Commission on Trade Unions and Employers' Organisations was appointed in 1965 under the chairmanship of Baro Donovan with the view to considering the relations between managements and employees and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with a particular reference to the law affecting the activities of these bodies. The Commission in its report dealt thoroughly with questions pertaining to the various aspects of work of trade unions and employers' organisations, collective bargaining, rights of individuals and role of the State in the sphere of industrial relations. Subsequently, a new Act, known as the Industrial Relations Act, was passed in 1971 incorporating many of the recommendations of the Donovan Commission, the note of reservation by Andrew Shonfield and other comments received in this regard.

## **The Industrial Relations Act, 1971**

The Industrial Relations Act 1971, repeals the whole of the Trade Union Act, 1871, the Trade Union Act Amendment Act, 1876, the Trade Disputes Act, 1906, and the Trade Disputes Act, 1965. The Act also partially repeals and amends certain provisions of the Conspiracy and Protection of Property Act, 1875, the Friendly Societies Act, 1896, the Trade Unions Act, 1913 and the Trade Union (Amalgamation) Act, 1964, and consolidates majority of the existing laws pertaining to trade unionism with or without amendments. The Industrial Relations Act, 1971 deals extensively with various aspects of trade unionism and industrial relations including: general principles in the sphere of industrial relations; registration of organisations of workers and employers; collective bargaining; rights of workers; unfair industrial practices; industrial courts; legal proceedings; and emergency procedures.<sup>9</sup>

## **The Trade Unions and Labour Relations Act, 1974**

The Act of 1971 was passed by a Conservative Government in the face of a bitter opposition by the trade union movement and consequently by the Labour Party also. Hence, the Labour Party was publicly committed to suitably amending the Act when it came to power again. Therefore, the Labour Government, which was installed in power in 1973, took the earliest opportunity to suitably repealing the Act and passing a fresh Act, known as the Trade Unions and Labour Relations Act, 1974. The new legislation repealed those provisions of the Act of 1971, which the trade unions vehemently opposed, particularly in respect of status of trade unions, their rights and obligations, restrictions on pre-entry closed-shop, collective bargaining and emergency procedures. The Act also abolished the NIRC.<sup>10</sup>

9. The main provisions of the Act have been discussed in detail in Chapter 19 dealing with Industrial Disputes and Industrial Relations Legislation in Great Britain.

10. See also p. 511.

## CHAPTER 18

# TRADE UNION LEGISLATION IN INDIA

### THE BACKGROUND

Though labour organisations came into existence in India in the last decade of the 19th century, it was only after the outbreak of the First World War in 1914 that they appeared in the form of modern trade unions.<sup>1</sup> Subsequently, as their numbers increased, membership expanded and they became active in seeking to promote and safeguard the interests of workers, they had to face the open hostilities of the employers and the public authorities. In the absence of any special legislation protecting their status, they received the same set-back under the Common Law as their British counterparts did much earlier. Thus, the interpretations given to Section 120 (B) of the Indian Penal Code dealing with criminal conspiracy raised considerable doubts regarding the legality of trade unions. Besides, their activities could also be considered in restraint of trade under Section 27 of the Indian Contract Act which provided, "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void."

The legal position of trade unions under the existing statutes and the Common Law become clearer following a decision of the High Court of Madras in 1921 in a case between Messrs. Binny and Company (Managing Agents of the Buckingham Mills) v. the

1. For details, see Chapter 4.

Madras Labour Union. The Court, basing its decision on the Common Law of England, considered the trade unions as illegal conspiracy and issued 'injunctions' on the leaders of the Madras Labour Union restraining them from instigating workmen to break their contracts with their employer and ordered their imprisonment. Though the case was withdrawn, the attitude of the courts towards trade unions became obvious. The decision aroused considerable resentment amongst the unionists, and it was rightly apprehended that the history of legal prosecution of the British trade unions during their early days would be repeated in India also if the Common Law was not adequately amended by a specific statute guaranteeing to the workers the right to organise. Strong demands were made for a legislation recognising workers' rights to organise and to engage in concerted activities in their interests.

The same year, the Legislative Assembly adopted a resolution moved by N.M. Joshi urging immediate steps for registration of trade unions and protection of the legitimate trade union activities. Subsequently, the Local Governments were requested to ascertain the views of public bodies and private persons on certain connected issues such as the principle of proposed legislation, recognition of strikes, protection of trade unions from civil and criminal liabilities, management of unions, etc. After receiving the views of the Local Governments, the Government of India drew up a Bill which was introduced in the Legislative Assembly on the 31st August, 1925. The Bill was passed the next year as the Indian Trade Unions Act, 1926. The Act is still in force in the country.

As a result of this legislation, the Indian trade unions escaped that long process of prosecution which the trade unions in Great Britain had to undergo for about a hundred years under the Common Law and the Combination Acts. It is apparent that legal protection to trade unions was made available very early in the history of the Indian trade union movement. It may not be derogatory to the Indian trade unions to say that, because of this early protection, they have come to miss much of the tightening of muscles, the hardihood and the solidarity which the trade unions in Great Britain came to acquire during their struggle for existence. The main provisions of the Act, as they stand amended

are summarised below.

## THE INDIAN TRADE UNIONS ACT, 1926 (MAIN PROVISIONS)

### Definitions

The Act defines a "trade union" as "any combination, whethertemporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or for imposing restrictive conditions on the conduct of any trade or business and includes any federations of two or more Trade Unions." A "trade dispute" has been defined as "any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person." [Sec. 2].

### Appointment of Registrar, Additional Registrar and Deputy Registrar

The appropriate government is required to appoint a person to be the Registrar of Trade Unions. It may also appoint Additional and Deputy Registrars of Trade Unions for the purpose of exercising and discharging, under the superintendence of the Registrar, such powers and functions of the Registrar as may be specified by order, and define the local limits within which they are to operate. [Sec. 3].

## REGISTRATION

Any seven or more members of a trade union, by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of the Act, may apply for its registration. Where an application for registration has been made, it is not to be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the trade union, some of the applicants (but not exceeding half of the total number of persons who made the application), have ceased to be the members of the trade

union or have given notice in writing to the Registrar dissociating themselves from the application.

Every application for registration is to be accompanied by a copy of the rules of the trade union and particulars in respect of the names, occupations and addresses of the members making the application; the name of the trade union and the addresses of its head office; and the titles, names, ages, addresses and occupations of its office bearers. If a trade union has been in existence for more than one year before the making of such an application, a general statement of the assets and liabilities of the trade union has to be submitted along with the application.

A trade union is not entitled to registration unless the executive is constituted in accordance with the provisions of the Act and its rules provide for the following particulars:

- (i) the name of the trade union;
- (ii) the whole of the objects for which the trade union is established;
- (iii) the whole of the purposes for which the general funds of trade union are to be applicable (The Act prescribes the purposes on which the funds are to be spent);
- (iv) the maintenance of a list of the members of the trade union and adequate facilities for its inspection by the office bearers and members of the trade union;
- (v) the admission of ordinary members who are to be persons actually engaged or employed in an industry with which the trade union is connected and admission of honorary or temporary members as officers in accordance with the provisions relating to the formation of executive of the trade union;
- (vi) the payment of a subscription by members of the trade union which is to be not less than twenty-five paise per month per member;
- (vii) the conditions under which any member is entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members;
- (viii) the manner in which the rules may be amended, varied or rescinded;
- (ix) the manner in which the members of the executive and the other office bearers of the trade union are to be ap-

pointed and removed;

(x) the safe custody of the funds of the trade union, an annual audit of the accounts, and adequate facilities for the inspection of the account books by officers and members of the trade union; and

(xi) the manner in which the trade union may be dissolved.

The Registrar may call for further informations in respect of application for registration and provisions to be contained in the rules of a trade union and may refuse to register it unless such informations are supplied. If the name of a trade union proposed to be registered is identical or resembles with that of any other existing trade union, the Registrar is empowered to require the persons applying for registration to change the name of the trade union and refuse to register the union until such changes have been made.

The Registrar is required to register the trade union on being satisfied that it has complied with all the requirements of the Act in regard to registration and enter the particulars relating to the trade union as contained in the statement accompanying the application for registration in a register to be maintained in a prescribed manner. On registering a trade union, the Registrar is required to issue certificate of registration in the prescribed form. [Secs. 4-7],

### **Cancellation of Registration**

A certificate of registration may be withdrawn or cancelled by the Registrar under two situations. In the first case, registration may be cancelled when an application to the effect is made by the trade union concerned but the Registrar is required to verify the application before he issues the order of cancellation. In the second case, the Registrar, on his own, may cancel the registration, if he is satisfied that the certificate has been obtained by fraud or mistake, or the trade union has ceased to exist or has contravened any provision of the Act, or has allowed any rule to continue in force which is inconsistent with the provision of the Act or has rescinded any of the required rules sent along the application for registration. However, in this case, the Registrar, before withdrawing or cancelling the certificate of registration is

required to give at least two months' previous notice in writing specifying the ground on which the certificate is proposed to be withdrawn or cancelled. [Sec. 10].

### **Appeal**

The Act, however, provides for appeal by an aggrieved person in case of refusal by the Registrar to register a trade union or on withdrawal or cancellation of a certificate of registration. Such an appeal may be made to the High Court or other Courts appointed for the purpose by the State Government. [Sec. 11].

### **Registered Office**

All communications and notices are generally to be addressed to the registered office of the trade union. Every registered trade union is required to communicate to the Registrar any change in address within fourteen days of such change.

Every registered trade union is a body corporate by the name under which it is registered, and has perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract, and by the same name sue or be sued. The Societies Registration Act, 1860, the Co-operative Societies Act, 1912 and the Companies Act, 1956 do not apply to any registered trade union, and registration of any trade union under these Acts is void.

## **RIGHTS OF REGISTERED TRADE UNIONS**

### **Immunity from Criminal Conspiracy<sup>2</sup>**

An officer or member of a registered trade union is not liable to punishment under Sub-section 120(B) of the I.P.C. (dealing with criminal conspiracy) in respect of an agreement made between the members for the purpose of furthering prescribed objects unless the agreement is designed to commit an offence. [Sec. 17].

### **Immunity from Certain Civil Liabilities<sup>3</sup>**

No suit or other legal proceeding is maintainable in any

2. For further details, see p. 437.

Civil Court against any registered trade union or any of its officers or members in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only "that such an act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills."

Besides, a registered trade union is not liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

The Act also provides that an agreement between the members of a registered trade union is not to be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade. A Civil Court is not authorised to entertain any legal proceeding instituted for the express purpose of enforcing or recovering damages for the breach of any agreement "concerning the conditions on which any members of a trade union shall or shall not sell their goods, transact business, work, employ or be employed." [Secs. 18-19].

### LIABILITIES OF REGISTERED TRADE UNIONS

#### Objects on which the General Funds may be Spent

The Act prescribes the following objects on which general funds of a registered trade union may be spent:

- (1) payment of salaries, allowances and expenses to office bearers of the trade union;
- (2) payment of expenses for the administration of the trade union, including audit of the accounts of the general funds;
- (3) the prosecution or defence of any legal proceeding to which the trade union or any of its members is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the trade

- union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employs;
- (4) the conduct of trade disputes on behalf of the trade union or any of its members;
  - (5) the compensation of members for loss arising out of trade disputes;
  - (6) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment;
  - (7) the issue of, or the undertaking of liability under policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment;
  - (8) the provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependents of members;
  - (9) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;
  - (10) the payment of contributions to any cause intended to benefit workmen in general; and
  - (11) any other object notified by the government in the official gazette. [Sec. 15].

### **Separate Fund for Political Purposes**

The Act provides for the constitution of a separate political fund by a registered trade union, for which contributions are to be levied separately. The political fund may be spent in furtherance any of the following civil and political objects:

- (1) payment of any expenses incurred by a candidate or prospective candidate for election as a member of any legislative body, or of any local authority (such expenses can be incurred before, during or after the election in connection with the candidature or election);
- (2) holding of any meeting or the distribution of any literature or documents in support of any such candidate;
- (3) the maintenance of any person who is a member of any

- legislative body or of any local authority;
- (4) the registration of electors or the selection of a candidate for any legislative body constituted under the constitution or for any local authority;
  - (5) the holding of political meetings or the distribution of political literature or political documents.

However, the Act lays down that no member can be compelled to make contributions to the political fund and a member who does not contribute to this fund is not to be deprived of benefits accruing to the trade union. Further, a member is not to be put under any disability or at any disadvantage by reason of his not contributing to the fund and contribution to the political fund is not to be made a condition obligatory for admitting members to the trade union. [Sec. 16].

### **Proportion of Officers to be connected with the Industry**

The Act provides that not less than one-half of the officers of a registered trade union are to be persons actually engaged or employed in any industry with which the trade union is connected, but the government may make exempting orders. [Sec. 22].

### **Minor members**

Any person who has attained fifteenth year of age may become a member of a registered trade union subject to any rules of the trade union to the contrary. Such a member may enjoy all rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules. [Sec. 21].

### **Right of Members to Inspect Books**

The membership list and the account book of a registered trade union have to be kept open for inspection by an officer or member of the trade union. The times for such inspection are to be prescribed under the rules framed. [Sec. 20].

### **Disqualifications of Office-bearers of Trade Unions**

A person disqualified for being chosen as, and for being, a

member of the executive or any other office-bearer of a registered trade union if he has not attained the age of eighteen years or has been convicted by a Court in India of an offence involving moral turpitude and sentenced to imprisonment unless a period of five years has elapsed since his release. [Sec. 21-A]. Any member of the executive or other office-bearer of a registered trade union who, before the commencement of the Indian Trade Unions (Amendment) Act, 1964, has been convicted of any offence involving moral turpitude and sentenced to imprisonment, is to cease, on the date of such commencement, to be such member or office-bearer unless a period of five years has elapsed since his release before that date. [Sec. 21-A].

### **Change of name, Amalgamation and Dissolution**

Any two or more registered trade unions may amalgamate together with or without dissolution or division of funds on the condition that the votes of at least one half of the members of each trade union entitled to vote are recorded and that at least 60% of the votes recorded are in favour of the proposal. Any registered trade union may change its name with the consent of at least two-thirds of the total number of its members but notice in writing signed by the Secretary and at least seven members of the trade union has to be given to the Registrar of the Trade Unions. In case of change of name affected by amalgamation, the notice has to be signed by the Secretary and at least seven members of each and every trade union which is a party. Such a change of name has to be registered by the Registrar but it can be refused by him if the name is identical with that of any other existing trade union. An amalgamated trade union is to be registered by the Registrar of the State where the head office of the union is situated. The change of name and the amalgamation is to come into effect from the date of registration. However, the change of name is not to affect any rights or obligations of the trade union or render defective any legal proceeding by or against the trade union. Any proceeding which might have been continued or commenced by or against the trade union in its former name may be continued or commenced in its new name. An amalgamation of two or more registered trade unions is not to prejudice

any right of such trade unions or any right of a creditor of any of them. [Secs. 24-26].

### *Dissolution of a Registered Trade Union*

In case of dissolution of a registered trade union, a notice signed by seven members has to be sent to the Registrar of Trade Unions within fourteen days of the dissolution. If the Registrar is satisfied that dissolution has been made in accordance with the rules of the trade union, he is required to register the dissolution which is to come into effect from the date of such dissolution. In case of dissolution, the funds of the trade union have to be distributed in accordance with the rules of the trade union and in other cases in the manner prescribed by the Registrar. [Sec. 27].

### **Returns**

A registered trade union is required to send annually a general statement of all receipts and expenditure and of the assets and liabilities of the trade union as existing on 31st day of December.<sup>3</sup> The Statement is to be made in the prescribed form. A registered trade union is also required to send, along with the general statement, a statement showing all changes of office-bearers during the year and a copy of the up-to-date rules. A copy of every alteration made in the rules has to be sent to the Registrar within fifteen days of the making of the alteration. For the purpose of examining the documents, the Registrar or any officer authorised by him may, at all reasonable time, inspect the certificate of registration, account books, registers, and other documents relating to a trade union at its registered office or may require their production at a place to be specified by him, but no such place should be at a distance of more than ten miles from the registered office of the trade union. [Sec. 28].

### **Penalties**

If a registered trade union makes any default in giving any

3. Substituted by the Trade Unions (Amendment) Act, 1964 for "31st day of March."

notice or sending any statement or other document required under the Act, every office-bearer or other person responsible to give or send the same, and in absence of such persons every member of the executive of the trade union, is punishable with fine which may extend to five rupees and in case of a continuing offence, with an additional fine which may extend to five rupees for each week after the first during which the default continues, but the total amount of fine is not to exceed fifty rupees. In case any person, who wilfully makes or causes to be made, any false entry in, or any omission from, the general statement or in or from any copy of rules or alterations of rules sent to the Registrar, is punishable with fine which may extend to five hundred rupees.

The Act further provides, "Any person who, with intent to deceive, gives to any member of any registered trade union or to any person intending or applying to become a member of such trade union any document purporting to be a copy of the rules of the trade union or of any alterations to the same which he knows, or has reason to believe, is not correct copy of such rules or alterations as are for the time being in force, or any person who, with the like intent, gives a copy of any rules of an unregistered trade union to any person on the pretence that such rules are of a registered trade union, shall be punishable with fine which may extend to two hundred rupees."

No Court inferior to [that of a Presidency Magistrate or a Magistrate of the First Class is authorised to try any offence under this Act. A Court is not authorised to take cognizance of any offence under this Act, unless the complaint has been made by or with the previous sanction of the Registrar of trade unions, or in case of an offence of supplying false information regarding trade unions, by the person to whom the copy was given. [Secs. 31-32].

## Regulations

The appropriate government is empowered to make regulations with respect to: (a) the manner in which trade unions and the rules of trade union are to be registered and the fees payable on registration; (b) the transfer of registration in the case of any registered trade union which has changed its head office from one

State to another; (c) the manner in which the qualifications of persons by whom the accounts of registered trade unions or of any class of such unions are to be audited; (d) the conditions subject to which inspection of documents kept by Registrars are to be allowed, and the fees which are to be chargeable in respect of such inspection; and (e) any matter which may be prescribed. [Secs. 29-30].

### AN ASSESSMENT

As will be evident from the text of the Act, its main purpose is to free the trade unions from certain constraints on their functioning, particularly in respect of criminal and civil liability for their actions in connection with trade disputes. In the absence of a constitutional and fundamental right to form associations and freedom of expression, the workers and their associations needed this legal protection. In order to be entitled to this legal protection it was felt that the trade unions should become the bonafide organisations of workers and, therefore, the Act imposed certain liabilities on them, particularly in respect of the composition of the executive committee, expenditure of the general fund, composition of the political fund, change of names, merger and amalgamation, submission of annual returns, etc. Today, when the right to form association and the freedom of expression has been incorporated in the Indian Constitution, the Trade Unions Act, 1926 has ceased to provide any significant protection to the trade unions and their members. An unregistered trade union, not subject to the liabilities imposed by the Act, can very well claim the criminal and civil immunities and enjoy the immunities provided to the registered trade unions. It is no longer necessary for unions to be registered to claim these immunities.

However, there are legislations, administrative practices and understandings which confer on registered trade unions certain privileges, which unregistered trade unions cannot claim. It is the incentive of enjoying these privileges that induces the trade unions to secure registration under the Act, rather than the need to secure legal protection.

The provision under the Act which entitles any seven or more members to apply for registration of a trade union is wrongly

supposed by many persons to be contributing to the multiplicity of trade unions. Even in Great Britain, the requirement for applying for registration is the same. Raising the number from 7 to 50 or 1,000 would not make any difference to the multiplicity of trade unions in large organisations.

The Act has enabled the government to collect useful statistics about the unions, which would not have been possible in the absence of this legislation.

The Act has been criticised on the ground that it does not provide for the recognition of trade unions, but that is more a deficiency of the public policy in this respect, which the Indian Trade Unions (Amendment) Act, 1947 tried to rectify.

#### THE INDIAN TRADE UNIONS (AMENDMENT) ACT, 1947

In view of the reluctance on the part of employers to recognise trade unions, a need for imposing a legal obligation on them for the purpose was increasingly felt ever since the enforcement of the Indian Trade Unions Act, 1926. However, nothing concrete was done till the middle of the 1940's. In 1946, the Government of India, after consulting State Governments, representatives of employers and trade unions and the Indian Labour Conference, introduced the Indian Trade Unions (Amendment) Bill in the Central Legislature providing for compulsory recognition of registered trade unions. The Bill was referred to Select Committee which submitted its report on the 28th February, 1947. The Select Committee made important suggestions, on the basis of which, the Bill was passed on the 13th November, 1947. It received the assent of the Governor General on the 20th December, 1947. However, the Act has not been brought into force so far.

The Indian Trade Unions (Amendment) Act, 1947 provided for compulsory recognition of trade unions on certain prescribed conditions and introduced penalties for certain unfair labour practices on the part both of the recognised trade unions and employers. A registered trade union could apply for recognition to the employer and in case of failure to obtain recognition within three months, could approach the Labour Court to be established under the Act. If the Labour Court was satisfied that the trade union fulfilled the conditions of recognition, it could make an order

directing such recognition. The executive of a recognised trade union was empowered to negotiate with the employers in respect of matters connected with the employment or non-employment or the terms of employment or conditions of work of all or any of its members.

### THE TRADE UNIONS BILL, 1950

The question of amending the Indian Trade Unions Act, 1926 was again discussed at the eleventh meeting of the Standing Labour Committee in 1949. Further amendments were suggested at the Labour Ministers' Conference in 1949. On the basis of these discussions, the Trade Unions Bill was introduced in the Parliament on the 23rd February, 1950. The Bill provided for the registration and recognition of trade unions and defined the law relating to registered and recognised trade unions and certain unfair labour practices. The Bill was comprehensive and covered many important issues relating to trade unions. It was again discussed at the tenth session of the Indian Labour Conference in March, 1950. Later it was referred to the Select Committee which submitted its report on the 1st December 1950, but the Bill lapsed owing to the dissolution of the Parliament.

No efforts were made to introduce any fundamental change in the law relating to trade unions prior to the submission of the Report of the National Commission of Labour in 1969. However, following the submission of the Report, the Central Government, in consultation with the State Governments, employers, workers, and their organisations, has been contemplating the introduction of a comprehensive legislation on trade unions and settlement of industrial disputes in the light of the recommendations of the National Commission on Labour.

## CHAPTER 19

### **INDUSTRIAL DISPUTES AND INDUSTRIAL RELATIONS LEGISLATION IN GREAT BRITAIN**

Ever since the trade unions were accorded legal recognition, industrial disputes in Great Britain have been resolved mostly through collective bargaining or joint-negotiations between the employers and the trade unions. However, the State also took steps from time to time to encourage joint voluntary machinery and to assist the parties in the settlement of their disputes. The Conciliation Act, 1896 and the Industrial Courts Act, 1919 provide for the settlement of industrial disputes by voluntary conciliation and arbitration. During the war-times, certain emergency measures were adopted providing for compulsory arbitration of disputes and prohibiting strikes and lockouts in order to avoid impediments to the war efforts, but compulsory arbitration of disputes and prohibition of strikes and lockouts have not been a feature of the system of industrial relations in Great Britain. However, Section 8 of the Terms and Conditions of Employment Act, 1959 introduced the feature of unilateral arbitration, under which any of the parties could ask for compulsory arbitration of a dispute. A few later enactments e.g. the Industrial Training Act, 1964, the Redundancy Payments Act, 1965 and the Contracts of Employment Act, 1963 also provide for resolution of certain types of individual disputes by industrial courts. An altogether new system of industrial relations courts has been envisaged under the Industrial Relations Act, 1971. Before dealing with these

Acts, it is worthwhile to mention in brief some of the early State measures designed to intervene in the relations between employers and workmen.

### EARLY MEASURES

During the Tudor period, the Vagrancy Acts and Statutes of Labourers imposed undue restrictions on workmen in the interests of their masters. Later, many Statutes of Apprentices were enacted, which empowered the Justices of Peace to settle disputes between masters and servants by determining wages and hours of work. The system of settling disputes by Justices of Peace continued to operate till the 18th century and a greater part of the 19th century. A few Acts passed during the period also enabled the Justices of Peace to settle disputes in particular trades.

An Act known as the Cotton Arbitration Act was passed in 1800 providing for a system of compulsory arbitration which remained in force for a long time. Later, the Arbitration Act was passed in 1824, which provided for the settlement of all disputes in many trades by compulsory arbitration, except those relating to wages. The Act, however, proved ineffective as most of the disputes centred round wages. Subsequently, under the Conciliation Act, 1869, representative councils were constituted for the settlement of disputes by mediation. In the case of the failure of mediation, disputes could also be referred to arbitration. Another Act, namely, the Arbitration (Masters' and Workmen's) Act was passed in 1872 providing for arbitration with binding awards, but the Act proved ineffective as sentiments in favour of settling disputes by joint negotiations or collective bargaining had already taken a deep root in the country.

### The Employers and Workmen Act, 1875

The Employers and Workmen Act, 1875 was designed to deal with disputes between masters and workmen arising out of breaches of contract. The "workmen" to whom the Act applied were persons (other than domestic or menial servants) engaged in manual labour under contracts with employers. The Act empowered courts to adjust claims for wages or damages, and, in certain circumstances, to order the performance of a contract in place

of the damages which would have been awarded. Similar powers could be exercised by the courts in relation to any dispute between an apprentice and his master.

As trade unions received adequate protection under the Trade Union Acts of 1871, 1876 and the Conspiracy and Protection of Property Act, 1875, there was a strong organisational drive and a number of trade unions successfully negotiated with their employers. However, the trade union activities were frequently associated with the conduct of strikes and it was realised that the existing machinery for the settlement of industrial disputes was inadequate. In 1891, a Royal Commission on Labour was appointed "to enquire into the relations between employers and workmen and to report whether legislation could be directed to remedy any faults disclosed." The Commission in its report submitted in 1894 laid great emphasis on the development of voluntary "Joint Conciliation Boards" and the "desirability of State encouragement" to such Boards. The recommendations of the Commission were embodied in the Conciliation Act, 1896.

### THE CONCILIATION ACT, 1896

The Conciliation Act, 1896 repealed the Acts of 1824, 1869, and 1872 and provided for public inquiry, conciliation and arbitration on a purely voluntary basis. The Act is still in operation in Great Britain.

The Act vests in the Minister of Labour (originally in the Board of Trade) the following powers for promoting settlement of disputes:

- (1) to enquire into the causes and circumstances of a dispute;
- (2) to take steps towards bringing the parties together;
- (3) to appoint a conciliator or board of conciliation on the application of the employers or the workers; and
- (4) to appoint an arbitrator on the application of both parties.

The conciliator appointed under the Act is required to inquire into the causes and circumstances of the difference by communication with the parties and to endeavour otherwise to bring about a settlement. He is also required to report to the Minister

of Labour measures adopted by him for bringing about an amicable settlement of the dispute. If a settlement is reached, a memorandum of the terms is to be drawn up and signed by the parties. A copy of the settlement is to be sent to the Minister. A similar procedure has to be adopted in case of a dispute settled by arbitration.

Any Board formed for the purpose of settling disputes between employers and workmen by conciliation or arbitration and any association or body authorised in writing by employers and workmen to deal with such disputes may apply to the Ministry of Labour (originally the Board of Trade) for registration as Conciliation Board. The Conciliation Boards are required to furnish, from time to time, returns, reports of proceedings etc. to the Ministry of Labour. [Sec. 17]. If the Minister of Labour is of the opinion that in any district or trade, adequate means do not exist for submission of disputes to a Conciliation Board, he may institute an enquiry as to the establishment of a Conciliation Board for the district or trade. [Sec. 4].

In the initial stages, the officers appointed for carrying out the purposes of the Act had to use their powers sparingly as both the employers and trade unions showed reluctance to accept even a limited government interference. However, during the course of time, the Ministry of Labour was "able to do a good deal of useful work in the field of industrial relations while giving full play to the voluntary principle in organised industries."<sup>1</sup>

### THE INDUSTRIAL COURTS ACT, 1919

In the year 1916, a committee was set up under the presidency of Mr. J. H. Whitley to consider and make suggestions for "securing a permanent improvement in the relations between employers and workers and to recommend means for securing that industrial conditions affecting the relations between employers and workers shall be systematically reviewed by those concerned with a view to improving conditions in future." The Committee issued five reports which dealt separately with: (a) Joint Industrial Council, (b) Works Committee, (c) Trade Board, (d) Conciliation

1. U.K. *Industrial Relations Hand-book*, 1953, p. 17.

and Arbitration, and (e) Summary of Recommendations. On the basis of the recommendations pertaining to conciliation and arbitration, the Industrial Courts Act, 1919 was enacted.

The Acts empowers the Minister to refer for arbitration trade disputes to: (1) the Industrial Court; or (2) one or more persons appointed by the Minister; or (3) a Board of Arbitration. Besides, the Act also provides for the appointment of Courts of Inquiry.

### (1) *The Industrial Court*

The Whitley Committee had recommended the establishment of a Standing Arbitration Council "to which differences of general principles and differences affecting whole industries or large sections of industries may be referred in cases where the parties have failed to come to an agreement through their ordinary procedure, and wish to refer the differences to arbitration. Such tribunal should include in its membership persons who have practical experience and knowledge of industry and who are acquainted with the respective standpoints of employers and work-people."

Accordingly, the Act of 1919 provides for a Standing Industrial Court—a permanent and independent tribunal. It consists of representatives of employers, workmen and independent persons—all to be appointed by the Minister of Labour. In addition to these members, provision has been made to appoint representatives of women. One of the independent members is to act as the President of the Court. [Sec. 1]. The Act provides that where the members of the Court are unable to agree to an award, the matter is to be decided by the Chairman acting with full powers of an umpire. In addition to its arbitral functions, the Court may be asked to give advice to the Minister of Labour and National Service on any question connected with a trade dispute or any other matter referred by him.

### (2) *Single Arbitrators*

Under the Act, trade disputes can also be referred to arbitration by one or more persons. A single arbitrator usually acts alone but he may be assisted by assessors. The assessors are not to be formally associated with the award in any way. The nature of their activities is to be decided by the arbitrator concerned.

### (3) *Board of Arbitration*

Another method of arbitration provided under the Act is the establishment of Board of Arbitration consisting of one or more persons to be nominated by the employers and an equal number of persons nominated by the workmen concerned. The Chairman of the Board is to be nominated by the Minister. The Board is temporary in character and is appointed to deal with specific disputes. The Act imposes on the Minister an obligation to constitute panels of suitable individuals out of whom the members of the Board may be appointed. The Chairman of the Board is authorised to exercise the powers of an umpire as is the case with the Industrial Court.

Any trade dispute may be reported to the Minister by either of the parties to the dispute and the Minister is required to consider the matter and take such steps which appear to him expedient for promoting settlement. While referring a dispute to any of the arbitration machinery mentioned above, the Minister is required to obtain the consent of both the parties to the dispute. When the consent of both the parties is not available, the Minister may refer the matter to the Industrial Court for advice. In case arrangements for conciliation and arbitration are already available in a trade in which a dispute arises, the Minister can refer the dispute to arbitration only when the arrangements in the trade have failed to settle the issue.

The awards are not legally enforceable, but once they are accepted or acted upon, they form a term or condition of the contract of employment. However, as the awards result from the joint desire of the parties to arrive at a settlement, in practice, the parties to the dispute voluntarily accept them.

### *Court of Inquiry*

The Act also empowers the Minister to constitute a Court of Inquiry to enquire into and to report on the causes and circumstances of a dispute. In appointing a Court of Inquiry, the consent of the parties to a dispute is not required. A Court of Inquiry may consist of one or more persons selected and appointed by the Minister. The Chairman of the Board is always an independent person, while other members may include representatives of the employers and workmen. A Court of Inquiry is empowered to call

for documents and summon witnesses. The report of a Court of Inquiry is to be laid before both the Houses of Parliament. [Sec. 4].

Courts of Inquiry do not have any direct relationship with the conciliation and arbitration proceedings. They are "primarily a means of informing Parliament and public opinion of the facts and underlying causes of a dispute." Generally, they are appointed in the last resort when methods of conciliation and arbitration have failed, and when collection of 'unbiased and independent examination of the facts' is considered necessary in the public interests. A Court of Inquiry may, however, make recommendations on the basis of which settlement of a dispute may be promoted. In actual practice, the reports of the Courts of Inquiry have been of considerable value in the resolution of disputes.

### COMPULSORY ARBITRATION

In Great Britain, recourse to compulsory arbitration has been taken mostly during the war periods. Thus, during the First World War, the Munition of War Acts adopted the principle of compulsory arbitration with binding awards. Strikes and lockouts were prohibited in all kinds of munition works and in case the parties failed to settle disputes themselves, they could be referred to compulsory arbitration. The Ministry of Munition was empowered to make the awards binding in all munition trades under certain circumstances. A large number of disputes were compulsorily referred to arbitration during the war period.

Similarly, during the Second World War, the Conditions of Employment and National Arbitration Order prohibited strikes and lockouts to avoid impeding the war efforts, established a National Arbitration Tribunal, and provided for compulsory arbitration of disputes if the matter could not be settled by negotiations between the parties or by an agreed reference to voluntary arbitration. Although the measure was introduced for the period of the war, it was retained during the post-war period also. In 1951, the Order was replaced by an Industrial Disputes Order which abolished the penal prohibition of strikes and lockouts and established a National Disputes Tribunal in place of the National Arbitration Tribunal set up under the Order of 1940. On the side of trade unions, the Minister could refer disputes to the National

Disputes Tribunal if approached by only such trade unions which habitually took part in the settlement of terms and conditions of employment in the industry, section of industry or the undertaking concerned; or which in absence of a negotiating machinery, represented a substantial proportion of the workers in the concerned industry or section of the industry. On the side of employers, disputes could be reported to the Minister for action by employers' associations or individual employers, but not on behalf of them. The Minister could stay arbitration proceedings or refuse access to the Tribunal in the event of stoppage of work or a substantial breach of agreement. The Industrial Disputes Tribunal was ultimately wound up in 1959.

### **Section 8 of the Terms and Conditions of Employment Act, 1959**

A provision of unilateral arbitration was again made by Section 8 of the Terms and Conditions of Employment Act, 1959. Under this section of the Act, an organisation of employers or workers, being a party to an agreement or an arbitration award establishing terms or conditions of employment in a trade or industry, may report a claim to the Minister of Labour (now Secretary of State, Employment) that a particular employer is not observing the established terms or conditions. When the Minister is satisfied that the recognised terms or conditions are not observed, he may take steps expedient for the settlement of the claim, otherwise, he must refer it to the Industrial Court. Such a claim can be referred to the Court even without the agreement or consent of the employer against whom the claim has been made. The Industrial Court, after hearing the case, must make an award requiring the employer to observe the recognised terms or conditions if it is satisfied that the claim is well founded, unless the employer is observing terms and conditions which are not less favourable than the recognised terms and conditions on which the claim was based. Such an award becomes an implied term of contract of employment and is enforceable in the ordinary courts of law.

### **Contracts of Employment Act, 1963, Industrial Training Act, 1964 and Redundancy Payments Act, 1965**

The Contracts of Employment Act, 1963, which entitles

employees, if employed for 26 weeks or more, to a minimum period of notice of termination of their employment, empowers an employee aggrieved by his employer's decision regarding termination to appeal to an Industrial Tribunal. Industrial Tribunals subsequently created under the Industrial Training Act, 1964 handle disputes under that Act and also those relating to termination under the Contracts of Employment Act, 1963. These Tribunals also deal with disputes relating to redundancy payments under the Redundancy Payments Act, 1965 which entitles employees dismissed by reason of redundancy or laid-off, or kept on short time to the extent specified under the Act, to money payments. The scope and functions of these Tribunals were considerably enlarged by the Industrial Relations Act, 1971. Other matters concerning terms and conditions of employment are resolved by the County Courts, the High Court, and in some cases, by the Magistrates' Courts.

### **The Donovan Commission**

By the year 1960, there had come to exist a widespread feeling that the laws relating to the trade unions, their rights and liabilities, and the rights and duties of the members had become much too complex for ordinary comprehension. It was also felt that the legal methods and practices for the settlement of industrial disputes were proving much too inadequate, and wild-cat strikes had become much too frequent and costly to the economy. It was, therefore, realised that the entire industrial relations' scene should be reviewed and the industrial relations laws up-dated.

Hence, a Royal Commission on Trade Unions and Employers' Associations was appointed on April 8, 1965 under the chairmanship of Baro Donovan "to consider relations between managements and employees and the role of trade unions and employers' associations in promoting the interests of their members and in accelerating the social and economic advance of the nation, with particular reference to the Law affecting the activities of these bodies; and to report." The Commission, which submitted its report in June, 1968, dealt thoroughly with the various aspects of the work of trade unions and employers' organisations, collective

bargaining, rights of the individuals, settlement of disputes and role of the State in the sphere of industrial relations. Favouring greater State intervention, Andrew Shonfield, a member of the Commission, gave a note of reservation on such important issues as legal enforcement of collective agreements, rights of trade unions and their recognition, rights of individuals, and powers of the machineries contemplated under the recommendations.

The Donovan's Report along with the Note of Reservation by Andrew Shonfield was widely discussed in all circles—a section of the public opinion and the views of the Conservative Party being in favour of the curtailment of trade unions' rights, and greater State intervention in industrial relations in order to safeguard the interests of the community. Consequently, when the Conservative Party came in power, it framed a comprehensive Bill, which incorporated significant modifications in the Commission's recommendations in the light of observations made by Andrew Shonfield and comments received from other corners. Numerous amendments were introduced in the Bill during its passage in the Parliament. The Industrial Relations Act received the Royal Assent in August, 1971.

### THE INDUSTRIAL RELATIONS ACT, 1971

#### Seven Main Elements

The Act has the following seven main elements:

- (1) The improvement of the voluntary system of industrial relations principally through a Code of Industrial Relations Practice which sets standards and gives guidance on the conduct of human relations in industry. The Code will serve as a handbook for everyone in industry setting out guides for management at all levels, for trade unions and their officials, including shop stewards and for individual workers;
- (2) The establishment of new rights for the individual worker in relation to trade union membership and activity, protection against unfair dismissal, information about his employment, improved terms of notice and unfair treatment by organisation of employers or of workers of

- which he is a member;
- (3) The establishment of a new concept of unfair industrial practice;
  - (4) The maintenance of these standards and rights through a new system of informal and expert industrial relations courts and tribunals, which will determine rights and liability, and hear complaints of unfair industrial practice;
  - (5) The establishment of a new system of registration for trade unions and employers' associations, which confines privileges and general immunity from court actions arising out of industrial disputes to registered organisations—namely, those which have satisfied the Registrar that their rules meet certain minimum standards specified in the Act;
  - (6) The introduction of the machinery for settling disputes over the recognition of trade unions and their bargaining rights and for improving procedures for handling industrial relations, notably with the help of the Commission on Industrial Relations; and
  - (7) New reserve powers for the protection of the community in serious emergency situations caused, or likely to be caused by industrial action.<sup>2</sup>

### MAIN PROVISIONS

The Act deals extensively with such major aspects of industrial relations as general principles, rights of workers, collective bargaining, registration and conduct of trade unions and employers' organisations, unfair industrial practices, machinery for regulating industrial relations, and measures during emergencies. The main provisions of the Act are discussed below.

### GENERAL PRINCIPLES

The purpose of the Act is to promote "good industrial relations" in accordance with the following general principles:

- (a) The principle of collective bargaining freely conducted

2. U.K. *Department of Employment Gazette* Vol. LXXIX, No.8, August 1971, pp.714-715.

on behalf of workers and employers and with due regard to the general interests of the community;

- (b) The principle of developing and maintaining orderly procedures in industry for the peaceful and expeditious settlement of disputes by negotiation, conciliation or arbitration, with due regard to the general interests of the community;
- (c) The principle of free association of workers in independent trade unions, and of employers in employers' associations, so organised as to be representative, responsible and effective bodies for regulating relations between employers and workers; and
- (d) The principle of freedom and security for workers, protected by adequate safeguards against unfair industrial practices, whether on the part of employers or others.

These Principles are to be regarded as guiding principles by the Secretary of State, Commission on Industrial Relations, Chief Registrar of Trade Unions and Assistant Registrars, National Industrial Relations Court and Industrial Tribunals—authorities contemplated under the Act. [Sec. 1].

### CODE OF PRACTICE

The Act requires the Secretary of the State to prepare and present a draft Code of Industrial Relations Practice to Parliament for approval within a year of the passing of the Act. The Code is to contain such practical guidance as would be helpful in the achievement of the purpose of the Act. In preparing the Code, the Secretary of State would have particular regard to:

- (a) the need for those who manage undertakings to accept the primary responsibility for the promotion of good industrial relations; and
- (b) the need for providing practical guidance with respect to disclosure of information by employers, and with respect to the establishment and maintenance of effective means of negotiation, consultation and communication at all levels between those who manage undertakings and the workers employed in them.

The Code of Practice as approved by the Parliament is not

directly enforceable, but in any proceedings before the National Industrial Relations Court or an Industrial Tribunal, it is admissible in evidence and its observance or non-observance would be taken into account by the Court or Tribunal in determining the issue before it. Provision has been made for the revision of the Code in consultation with the Trades Union Congress and the Confederation of British Industry, and for the Commission on Industrial Relations to be asked for its advice on the revision. [Secs. 2-4]. A Code of Practice has accordingly been prepared and has received the approval of the Parliament.

## **RIGHTS OF WORKERS**

### **Trade Union Membership and Activities**

The Act establishes the right of an employee to belong to a trade union of his choice and to take part in its activities including holding office, if elected. He also equally has the right not to belong to any trade union. The Act declares that it would be an unfair industrial practice for an employer, or for any person acting in his behalf: (a) to prevent or deter a worker from exercising these rights, or (b) to dismiss, penalise or otherwise discriminate against a worker by reason of his exercising any of these rights, or (c) to refuse to engage a worker because of his membership or non-membership of a trade union. Similarly, it would be an unfair industrial practice to call, organise, finance or threaten a strike or other irregular industrial action to put pressure on an employer to engage in any activity which would amount to an unfair industrial practice for him in respect of the worker's membership or non-membership of a trade union as mentioned above.

Where an agency shop agreement is in operation, a worker cannot refuse to be a member of the trade union with which the agreement was made, unless he agrees to pay appropriate contributions to the trade union in lieu of his membership. If the workman has a conscientious objection to either of these, he may make equivalent contributions to a charity as determined by agreement between him and the trade union. Where there is an agency shop agreement, it would not be an unfair industrial practice on the

part of an employer to dismiss, penalise or otherwise discriminate against an employee or to refuse to engage any person, if he has refused both to belong to a trade union and to make an appropriate payment in lieu of membership.

Claims about infringement of the right to belong or not to belong to a trade union are to be dealt with by the Industrial Tribunals, which may award compensation where appropriate. [Secs. 5-10, 33].

### Agency Shop Agreements

The Act authorises "agency shop" agreements under which a registered trade union or unions represent and are supported financially by all the employees in a particular undertaking or establishment or part of it. For the purposes of the Act, an "agency shop agreement" means "an agreement made between one or more employers and one or more trade unions or between an employers' association and one or more trade unions, whereby it is agreed, in respect of workers of one or more descriptions specified in the agreement, that their terms and conditions of employment shall include a condition that every such worker must either: (a) be or become a member of that trade union or of one of those trade unions, as the case may be, or (b) agree to pay appropriate contributions to that trade union or (as the case may be) to one of those trade unions, in lieu of membership or...agree to pay equivalent contributions to a charity."

In case a claim for an agency shop agreement is resisted by the employer, a trade union or trade unions or a joint negotiating panel recognised as having negotiating rights of the employees concerned or the employer may apply to the NIRC for a ballot on whether the employees concerned favour an agency shop. On receipt of the application, the NIRC would normally request the CIR to take a ballot on the question. The Commission is required to determine the description of workers who are to participate in the ballot and to report to the NIRC accordingly. The Commission would then take ballots under its own auspices or may arrange for its conduct by some other body under its supervision. If the result of the ballot shows that either a majority of the workers eligible to vote in the ballot or not less than two-thirds of those

actually voting have voted in favour of an agency shop agreement, the employer concerned is required to take all requisite actions for the purposes: (a) of entering into an agency shop agreement in respect of the description or descriptions comprised in the ballot, and (b) after such an agreement has been made, of carrying out the agreement so long as it remains in force. The result of the ballot is to be reported to the NIRC, the employer, the trade union/unions, and to the relevant joint negotiating panel concerned.

It would be an unfair industrial practice for any person including a trade union or other organisation of workers to induce or attempt to induce an employer by calling, organising, procuring or financing a strike or other irregular action short of a strike or threatening to do so, to induce or attempt to induce an employer not to perform a duty for entering into an agency shop agreement or carrying it out.

In case an agency shop is not approved by either a majority of those eligible to vote or two-thirds of those actually voting, the NIRC would order for not making any agency shop agreement for a period of two years from the date the result of the ballot was communicated to the Court and any such agreement made during the period would be void.

Similar provisions have been made regarding continuance of an agency shop agreement already in force, but in such a case, an application for whether it should continue has to be made by at least one-fifth of the employees covered by the agreement.

It would be an unfair industrial practice for an employer, by instituting, carrying on, organising, procuring or financing a lockout, or threatening to do so, knowingly to induce or attempt to induce a trade union or joint negotiating panel or any other person, to refrain from making an application for an agency shop agreement or for the continuance of an existing one. Similarly, it would be an unfair industrial practice for any person (including any trade union or any official of a trade union) to force an employer to enter into an agency shop agreement not permitted under the Act or to refrain him from making an application for such an agreement. [Secs. 11-16].

## Approved Closed Shop Agreements

The Act nullifies 'pre-entry closed shop' but authorises 'approved closed shop' agreements. An "approved closed shop agreement" has been defined as one which is made between one or more employers and one or more trade unions or between an employers' organisation and one or more trade unions whereby it is agreed in respect of workers of one or more descriptions specified in the agreement "that their terms and conditions of employment shall include a condition that every such worker, if he is not already a member of that trade union or of one of those trade unions, as the case may be, must become such a member unless specially exempted...and is made in accordance with proposals approved by an order of the Industrial Court...."

A worker may object to becoming a member of the trade union on the ground of conscience, but he has to propose to the trade union that, instead of becoming a member, he would agree to pay appropriate contributions to a charity to be determined by agreement between him and the trade union. If the trade union agrees to the proposal, the worker is deemed to be specially exempted. Every approved closed shop agreement is to include provisions as to the principles in accordance with which appropriate contributions to a charity in respect of specially exempted workers are to be calculated. Disputes regarding objections of a member on the grounds of conscience, charity to which contributions are payable and the amount of contribution are to be decided by Industrial Tribunals.

A worker to whom the agreement applies and who is not specially exempted does not have the right as between himself and the employer to refuse to be a member of the trade union or of one of the trade unions with which the agreement was made. In case a worker is specially exempted, he may refuse to be a member of the trade union if he agrees to pay appropriate contributions to a charity. A worker is treated as having been excluded from being a member of a trade union if his application for membership of the trade union has been rejected or he has been expelled from membership of the trade union. He is also deemed to have been excluded from being a member if his appeal concerning rejection

or expulsion has been heard and dismissed or has been withdrawn or the time for appealing has expired without his having exercised that right.

Where an approved closed shop agreement is in force, it would not be an unfair industrial practice for an employer or a person acting in his behalf:

- (a) to dismiss, penalise or otherwise discriminate against a worker to whom the agreement applies, on the grounds that he is not a member of the trade union, or (as the case may be) of one of the trade unions, with which the agreement was made and has refused to become or has been excluded from being such a member, or, if specially exempted, has refused or failed to pay appropriate contributions to a charity; or
- (b) to refuse to engage a worker who, if engaged by him, would be a worker to whom the agreement applies, on the grounds that he is not a member of that trade union or of one of those trade unions, as the case may be, and refuses to become or has been excluded from being such a member.

A worker, even if he has not expressly refused to become a member of a trade union with which an approved closed shop agreement was made, will be deemed to have so refused if he does not duly apply for the membership of that trade union within a prescribed period or if he withdraws his application after applying for membership.

Schedule 1 of the Act sets out details concerning application for an approved closed shop agreement, its approval, conduct of ballots for contracting of a fresh agreement, continuance of an existing one and special exemption from the agreement.

An application for approval of an approved closed shop agreement has to be made to the NIRC. It may be made jointly by one or more employers and one or more trade unions or an organisation of employers and one or more trade unions which propose to enter into such an agreement. The application is to be accompanied by a draft of the proposed agreement to be approved. No such application is to be entertained if it is made before the end of two years beginning from the date of making the previous application or the date on which the result of a ballot in this

regard was reported to the NIRC. On receiving the application, the NIRC would refer it to the CIR for examination and report. The Commission is required to examine as to whether the draft agreement is necessary for the workers concerned to be comprised in an approved closed shop agreement for the following purposes:

- (a) of enabling them to be organised or to continue to be organised in accordance with "the principle of free association of workers in independent trade unions, and of employers in employers' associations, so organised as to be representative, responsible and effective bodies for regulating relations between employers and workers;
- (b) of maintaining reasonable terms and conditions of employment and reasonable prospects of continued employment for those workers;
- (c) of promoting or maintaining stable arrangements for collective bargaining relating to those workers; and
- (d) of preventing collective agreements relating to those workers, which have been or may thereafter be made by the applicants, from being frustrated.

The Commission is also required to consider if the aforesaid purposes could not necessarily be expected to be fulfilled by means of any agency shop agreement.

After examining the details, the Commission would prepare a report setting out the conclusions and transmit it to the NIRC. Copies of the same are to be sent to the applicants and the Secretary of State. In case the report does not favour an approved closed shop, the NIRC is not to proceed further with the application. In other cases, the NIRC will make an order for enabling an application to be made for a ballot allowing a period not less than one month and not more than three months from the date of the order. In case no application for a ballot is made within the prescribed time, the NIRC would make an order approving the proposals as embodied in the draft agreement.

The details regarding the number of workers required to make an application, conduct of ballots, approval of the result of ballot, etc. are similar to those applicable in the case of agency shop agreements mentioned earlier. Similar provisions apply in the case of the continuance of approved closed shop agreements.

If a ballot for an approved closed shop agreement or the continuance of an existing one is approved by either a majority of those eligible to vote or two-thirds of those actually voting, the NIRC is required to make an order of approval for a fresh agreement or the continuance of the one already in existence, as the case may be. [Secs. 17-18, Schedule 1].

### **Rights to Notice and Contract of Employment**

The Act amends certain provisions of the Terms and Conditions of Employment Act, 1963 relating to minimum periods of notice for termination of employment and employer's responsibility to give written statement on the terms of employment of an employee. Under the Contracts of Employment Act, 1963, employers are required to give minimum periods of notice of termination of an employee's services. The longest period of notice required was four weeks after five years' service. The Industrial Relations Act increases the periods of notice for long service employees. An employee is now entitled to a minimum of six weeks' notice after 10 years' of service and eight weeks' notice after 13 years of service. The period of service which entitles an employee and an employer to one week's notice has been reduced from 26 to 13 weeks.

Under the Terms and Conditions of Employment Act, 1963, an employer is required to give a written statement of the main terms of an employee's employment. The Industrial Relations Act requires an employer to include the following in the written statement of the main terms of the employee's employment:

- (a) additional information about his entitlement to holidays and holiday pay;
- (b) information about the employee's right to choose whether to belong to a trade union including, where appropriate, the conditions of an agency shop or an approved closed shop agreement; and
- (c) the procedure available to the employee where he has a grievance about his employment. [Secs. 19-21].

### **Protection Against Unfair Dismissal**

Under the provisions of the existing law, an employee has the

right to seek damages if he is dismissed in breach of contract. Besides, the Redundancy Payments Act, 1965 gives protection to the employee dismissed on account of redundancy. But so far the employee did not have any legal redress against his employer for unfair dismissal.

The Industrial Relations Act, 1971 confers upon the employee the right not to be unfairly dismissed by his employer and makes it an unfair industrial practice for an employer to dismiss an employee unfairly. These provisions apply to all categories of employees in every employment except those employed in undertakings with less than four employees; those employed by husbands; wives or close relatives; registered dock workers; share fishermen; teachers in Scotland who have the protection of the Education (Scotland) Act, 1962; and those who work less than 21 hours a week. Subject to certain prescribed conditions, these provisions do not also apply to workmen not continuously employed for at least 104 weeks ending with the date of termination; workmen who have attained the age of retirement or the age of 65 if men or the age of 60 if women; and workmen whose term of contract of employment (for a period of 2 years or more) has expired and the same has not been renewed. Parties to voluntary arrangements, which provide adequate protection against unfair dismissal, are authorised to apply for their agreement to be exempted from the statutory machinery for hearing complaints of unfair dismissal.

The Act specifically states that the dismissal of an employee is to be regarded as unfair if the reason or the principal reason was that the employee had exercised or had intended to exercise the right to be a member of a trade union, to take part in its activities, and the right not to belong to a trade union. A dismissal is not to be treated as unfair if it is shown that the employer had acted reasonably and had dismissed the employee because of his incapability or lack of qualifications, misconduct, redundancy or legal disqualifications.

In the determination of a complaint of an unfair dismissal, the onus of proof of the reason for dismissal rests upon the employer.

It would be an unfair industrial practice for any organisation of workers, or anyone acting for it, to call or threaten to call a strike, or to organise any irregular industrial action, to induce an

employer to dismiss an employee unfairly. The Act requires a union or unofficial work group to contribute towards compensation paid by an employer for unfair dismissal, if that dismissal was the result of pressure from the union. [Secs. 22-33].

## COLLECTIVE BARGAINING

### Collective Agreements

Hitherto collective agreements in Great Britain had a doubtful status in law which had led to dissatisfaction in many corners. The Industrial Relations Act seeks to remedy this by providing that every collective agreement, which is made in writing after the commencement of the Act, is to be conclusively presumed to be legally binding, except insofar as there is an express provision to the contrary in the agreement. These provisions also apply to decisions of joint bodies of workers and employer/s established by or under collective agreements concerning terms and conditions of employment of workers or other matters which a procedure agreement can provide.

Where industrywide bargaining is practised, the resulting agreements are generally classified into: (a) substantive agreements, and (b) procedure agreements. The substantive agreements lay down rules governing employment i.e. they deal with such matters of terms and conditions of employment as rates of pay, hours of work, overtime rate, and holiday arrangements. The procedure agreements deal with procedures for reaching, amending, interpreting substantive agreements and with procedures for dealing with disputes which may arise in the industry.

For the purposes of the Industrial Relations Act, a "procedure agreement" is so much of a collective agreement as relates to any of the following matters:

- (a) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, terms and conditions of employment;
- (b) machinery for consultation with regard to, or for the settlement by negotiation or arbitration of, other questions arising between an employer or group of employers and one or more workers or organisations of workers;

- (c) negotiating rights;
- (d) facilities for officials of trade unions or other organisations of workers;
- (e) procedure relating to dismissal;
- (f) procedures relating to matters of discipline; and
- (g) procedures relating to grievances of individual workers.

The Act declares that it would be an unfair industrial practice for any party to a collective agreement to break a legally enforceable agreement or a part of it, if that part is legally enforceable. When a collective agreement or a part of it is legally enforceable, it would be an unfair industrial practice for any party to the agreement not to take reasonable steps for preventing persons on behalf of any party from taking action contrary to an undertaking given by the party to the agreement, and where the party is an organisation, of preventing its members from taking such an action. [Secs. 34-36].

### **Remedial Action where Procedure Agreement is Non-existent or Defective**

Where there is no satisfactory procedure agreement or where there is recourse to industrial action in breach of a procedure agreement, and either of these conditions is impeding the development or maintenance of good industrial relations, the Act provides for an application to the NIRC by the Secretary of State, an employer or a registered trade union for a reference to the CIR. Before making an application to the NIRC, notice should be given by a party to the Secretary of State to allow him an opportunity for conciliation. However, without waiting for the outcome of the efforts of the Secretary of State, either of the parties may apply to the NIRC. If, on application, the NIRC feels that there are reasonable grounds for believing that the unit of employment concerned suffers from the defects enumerated above, it would refer the matter to the CIR for examination of the defects and for suggesting remedial measures. The CIR would examine the existing procedures or the absence of them, with a view to producing new or improved procedural arrangements. The Commission is required to promote discussions between the parties to secure voluntary acceptance of these procedures, and if it

thinks that the purposes of the reference have been adequately fulfilled, will report this to the NIRC which may withdraw the reference. In case the reference is not withdrawn, the CIR will report its findings and recommendations to the NIRC indicating the extent to which the parties have agreed to them. Any of the parties concerned by the recommendations of the Commission may apply, within six months of the report, to the NIRC for an order making the recommendations legally enforceable. The NIRC will make an order to that effect, unless it does not find it to be necessary. [Secs. 37-43].

### Recognition of 'Sole Bargaining Agent'

The consultative document circulated before the introduction of the Industrial Relations Bill in the Parliament emphasised the importance of a stable and effective bargaining structure for satisfactory and healthy industrial relations. The document maintained that disputes about bargaining rights and structures could most satisfactorily be resolved by the parties themselves with the help of conciliation. However, it also realised that sometimes differences could not be resolved on account of the unwillingness of an employer to recognise one or more trade unions or because of fragmentation of bargaining, resulting from multi-unionism. The Industrial Relations Act, 1971, therefore, recognises the claim of a trade union to have exclusive negotiating rights as a 'sole bargaining agent' under certain conditions.

An application for a union or unions having exclusive negotiating rights as a sole bargaining agent for specified groups of employees may be made to the NIRC by one or more trade unions, or by employer or any of the employers concerned or jointly by employer and trade union/s or by the Secretary of State. If the application is made by any party other than the Secretary of State, a notice has to be given to the Secretary of State with a view to giving him an opportunity to conciliate, but the party or parties may make application to the NIRC without waiting for the outcome of the efforts made by the Secretary of State.

On receiving the application, the NIRC is required to refer

it to the CIR if it is satisfied that the parties used their best endeavours to settle the dispute and that reference to the CIR is necessary for a satisfactory and lasting settlement. In case a satisfactory and lasting settlement on the questions at issue is reached before the CIR submits its final report to the NIRC, it may request the NIRC to withdraw the reference, and if satisfied about the settlement, the NIRC will withdraw the reference. In other cases, the CIR will investigate into the matter and make recommendations regarding bargaining arrangements under which there would not be more than one bargaining agent for each bargaining unit as defined by it. The bargaining agent may be one union or consist of a joint negotiating panel of two or more unions.

While making its recommendations, the CIR is required to take into account the extent to which the union or the joint panel of trade unions have the support of a substantial proportion of the employees affected; the resources and organisation effectively to represent the employees; and extent to which different descriptions of employees have interests in common, including the nature of their work, their training, experience and professional or other qualifications. The CIR is prevented from recommending as sole bargaining agent an organisation of workers which is not independent i.e. one under the domination or control of an employer.

The recommended sole bargaining agent or the employer may apply to the NIRC to have the CIR's recommendations made enforceable. The application is to be granted if the employees concerned endorse the CIR's recommendations by a majority of those voting in a secret ballot. The NIRC will then make an order requiring the employer to negotiate with the sole bargaining agent. It would be an unfair industrial practice for the employer not to bargain with the sole bargaining agent or to negotiate with any other organisation in respect of the employees in the bargaining unit. It would also be an unfair industrial practice for anyone to threaten or induce industrial action to challenge the bargaining structure established by the NIRC's order or the position of the sole bargaining agent. [Secs. 44-50, 54, 55].

### **Withdrawal of Recognition as Sole Bargaining Agent**

The Act also empowers the NIRC to make an order ending

a union's recognition by the employer as a sole bargaining agent. if a majority of the employees voting in a secret ballot favoured this. Before such a ballot could be held, there would have to be an application by one-fifth of the employees concerned within a bargaining unit, and two-fifths if the union was recognised under an order of the NIRC. Besides, the CIR is required to seek a voluntary settlement before a secret ballot is held. In case the NIRC makes an order ending a union's recognition, there would be an obligation on the employer not to negotiate with the union for two years. [Secs. 51-55].

### **Disclosure of Information**

The successful conduct of collective bargaining requires that the employer should not withhold information about his undertaking that the trade union representatives need in course of negotiations. Accordingly, the Act requires an employer to disclose to the representatives of a registered trade union recognised by him any information: (a) without which the trade union representatives would be to a material extent impeded in carrying on collective bargaining, and (b) which it would be in accordance with good industrial relations practice that the employer should disclose to them for the purposes of collective bargaining.

The Act empowers the Secretary of State to require employers with undertakings employing more than 350 employees to disclose specified information annually to their employees. The information to be furnished has to be specified by regulations made by the Secretary of State subject to the approval of the Parliament. The Secretary of State is empowered to make exemptions from the obligation to disclose information.

Employers are not required to disclose any information which is against the interest of national security or which is seriously prejudicial to the interests of their undertaking. They are also not required to disclose information given to them in confidence or such information which relates to an individual, unless the individual has consented. [Secs. 56-57].

### **Notification of Procedure Agreements**

The Act empowers the Secretary of State to make regulations

requiring specified classes of employers to notify him of any procedure agreements and arrangements to which they are parties or which they have agreed to observe. The regulations would allow at least six months for this information to be supplied. Failure to comply, or furnishing false information or inaccurate or incomplete documents is an offence punishable on summary conviction. [Secs. 58-59].

### **Registration and Conduct of Trade Unions and Employers' Associations**

Hitherto legal status as a trade union and the advantages flowing therefrom were available equally to registered and unregistered bodies. It was thought desirable that the new rights contemplated under the Industrial Relations Act should apply only to those organisations, which by registering, accepted statutory minimum standards in relation to their rules. The Act, accordingly, provides for the appointment of a Chief Registrar of Trade Unions and Employers' Associations, Assistant Registrars and deals extensively with principles as to the conduct of trade unions and employers' associations, their registration, obligations of registered bodies, and powers and functions of authorities contemplated under the Act.

The Act defines a 'trade union' as an organisation of workers which is for the time being registered under the Act. For the purposes of the Act, an organisation of workers means "an organisation (whether permanent or temporary) which either: (a) consists wholly or mainly of workers of one or more descriptions and is an organisation whose principal objects include the regulation of relations between workers of that description or those descriptions and employers or organisations of employers, or (b) is a federation of workers' organisations." [Sec. 61]. Similarly, an 'employers' association, has been defined as an organisation of employers which is for the time being registered as an employers' association. An 'organisation of employers' means an organisation (whether permanent or temporary) which either: (a) consists wholly or mainly of employers or individual proprietors of one or more descriptions and is an organisation whose principal objects include the regulation of relations between employers or individual pro-

prietors of that description or those descriptions and workers or organisation of workers, or (b) is a federation of employers' organisations. [Sec. 62].

### **Registrar of Trade Unions and Employers' Associations**

The Act provides for the appointment of a Chief Registrar of Trade Unions and Employers' Associations by Her Majesty who will hold office during Her pleasure. The Chief Registrar is empowered to appoint Assistant Registrars for England and Wales, and for Scotland. [Secs. 63-64, Schedule 3].

The main responsibilities of the Chief Registrar are to ensure that the rules of trade unions and employers' associations conform to certain standards and are observed; and that trade unions and employers' associations are properly administered so as to safeguard the public interest and protect the rights of union members. He is empowered to initiate inquiries and investigate complaints concerning the conduct of registered organisations, and to take unresolved cases to the NIRC for adjudication. [Secs. 73-77, 81-83, 87-95].

The Chief Registrar is required to set up a 'provisional register' as soon as practicable after the passing of the Act covering every organisation registered under the Trade Unions Acts 1871 to 1964, together with unregistered organisations making application within six months of the passing of the Act. Organisations on the 'provisional register' would be protected from legal action for a limited period of time and could be transferred to the permanent register on the satisfaction of the eligibility conditions mentioned below. [Secs. 78-80].

### **Guiding Principles as to the Conduct of Organisations of Workers or Employers**

The Act lays down the following guiding principles for the conduct of organisations of workers or employers:

- (1) Anyone who is qualified for membership should not be excluded from membership because of arbitrary or unreasonable discrimination;
- (2) Every member shall have the right, on giving reasonable

- notice and complying with any reasonable conditions, to terminate his membership of organisation at any time;
- (3) No member of the organisation should be arbitrarily or unreasonably excluded from office, nominating candidates for office, voting in elections or ballots and attending or participating in meetings;
  - (4) Every member should be free to vote without interference or constraint, and ballots should be kept secret;
  - (5) An individual would have the right to have written notice of any charge brought against him, reasonable time to prepare his defence, a full and fair hearing, and a written statement of the findings before he could be disciplined; nor should he be subjected to any unfair or unreasonable disciplinary action;
  - (6) Membership should not be terminated by the organisation except for disciplinary reasons without reasonable notice of the proposal and the reason for it;
  - (7) No restriction should be placed on the right of a member to institute proceedings before any court or tribunal or to give evidence in such proceedings;
  - (8) No disciplinary action should be taken against a member for refusing or failing to take part in any unfair industrial practice;
  - (9) In case of a workers' organisation no disciplinary action should be taken against a member for refusing or failing to take part in any strike or industrial action which is not in contemplation or furtherance of an industrial dispute;
  - (10) In case of an employers' organisation, no disciplinary action should be taken against a member for refusing or failing to institute or participate in a lockout which is not in contemplation or furtherance of an industrial dispute. [Secs. 65, 69].

It would be an unfair industrial practice for any organisation or its official to take action against any member in contravention of these principles. [Secs. 66, 70].

## Registration of Trade Unions and Employers' Associations

The Act specifies conditions under which an organisation of workers can be registered as a trade union, and an organisation of employers as an employers' association.

An organisation of workers is eligible for registration if: (a) it is an independent organisation of workers, and (b) has power, without the concurrence of any parent organisation, to alter its own rules and to control the application of its own property and funds. A federation of workers' organisations is eligible for registration only when all its constituent or affiliated organisations are either trade unions or organisations for the time being entered in the 'special register' [Secs. 67, 84-86]. Similarly, an organisation of employers is eligible for registration as an employers' association if it has power, without the concurrence of any parent organisation, to alter its own rules and to control the application of its own property and funds. [Sec. 71].

Every organisation of workers or of employers applying for registration is required to send to the Chief Registrar a copy of its rules, a list of its officers and names and addresses of its branches. [Secs. 68, 72].

If the Registrar is satisfied that the body making the application is an organisation of workers eligible for registration as a trade union and has complied with the requirements of making an application and paid the prescribed fee, he would register it as a trade union and issue a certificate of registration. [Sec. 68]. Similar provisions have been made in respect of registration of an organisation of employers as an employers' association. [Sec. 72].

Registered organisations must have rules that are consistent with the basic principles set out in the Act and must deal adequately with specified subjects relating to their constitution and management, their relations with members, and their property and nance. [Schedule 4].

The Registrar is required to give registered organisations time in which to make good any deficiencies in their rules, and is authorised to request the NIRC to deregister an organisation which failed to comply. Organisations may, however, ask the NIRC to grant them relief from the Registrar's requirements and may also

appeal against the refusal of registration by the Registrar. [Secs. 75-77, 92-94].

Organisations to which registration is granted will have corporate status and all property held in trust will automatically be vested in them. Unregistered organisations may be able to sue or be sued in their own names. [Sec. 74].

Every registered trade union or employers' association is required to send annual returns furnishing the prescribed particulars including revenue accounts, balance sheet, report of the auditors. In addition to the annual return, a registered trade union or employers' association is required to send to the Registrar a copy of all changes in the rules, officers and the address of its principal office. [Secs. 87-89, Schedule 5].

### OTHER UNFAIR INDUSTRIAL PRACTICES

In addition to the unfair industrial practices discussed earlier in relation to rights of workers, collective bargaining, and registration and conduct of trade unions and employers' associations, the Act specifies certain other actions to be treated as unfair industrial practices.

The Act makes it an unfair industrial practice for anyone, other than a trade union or an employers' association or anyone acting in official capacity on behalf of a trade union or employers' association, to induce or threaten to induce another person, in contemplation or furtherance of an industrial dispute, to break a contract to which he is a party. [Sec. 96].

It would also be an unfair industrial practice for any one, in contemplation or furtherance of an industrial dispute, to take or threaten to take any of the following steps with the aim of aiding or abetting anyone carrying on an unfair industrial practice described in the Act:

- (a) calling, organising, procuring or financing a strike;
- (b) organising, procuring or financing any industrial action short of a strike; or
- (c) instituting, carrying on, organising, procuring or financing a lockout. [Sec. 97].

Further, it would be an unfair industrial practice for anyone, in contemplation or furtherance of an industrial dispute, to take

or threaten to take action to induce a breach of contract or to interfere with the performance of that contract against any person who is not a party to the original dispute and is not giving material support to any party to the dispute. A person is not to be regarded as a party to an industrial dispute by reason only that he: (a) is an associated employer in relation to an employer who is a party to the dispute; or (b) is a member of an organisation of employers of which a party to the industrial dispute is also a member; or (c) has contributed to a fund which may be available to such a party by way of relief for losses incurred in consequence of the dispute, where his contribution was paid without specific reference to that dispute; or (d) supplies goods to, or provides services for, a party to the industrial dispute in pursuance of a contract entered into before the industrial dispute began, or is a party to such a contract under which he is required to supply goods to, or provide services for, a party to an industrial dispute. [Sec. 98].

If an employee takes part in a strike after due notice to do so has been given by him or on his behalf, he is not liable to any action for breach of contract. [Sec. 147].

### **INDUSTRIAL RELATIONS COURTS, ETC.**

#### **National Industrial Relations Court, Industrial Tribunals, Commission on Industrial Relations and Industrial Arbitration Board**

The Act establishes a new system of industrial relations courts specially suited by their composition and experience to deal with industrial relations matters. At the higher level, there will be a new National Industrial Relations Court and at the lower level, there will be the existing Industrial Tribunals considerably expanded and entrusted with new functions. In general, the Industrial Tribunals are to hear cases arising under the Act which relate to individuals, and the NIRC is to hear cases which are more general in their application, including those relating to collective agreements. With a few exceptions, the NIRC is to hear appeals on points of law from the Industrial Tribunals.

## National Industrial Relations Court

The National Industrial Relations Court is to consist of presiding judges nominated by Lord Chancellor and the Lord President of the Court of Session from the higher judiciary. The Lord Chancellor is required to appoint one of these as the President of the Court. Provisions have also been made for the appointment of lay members by the Queen on the joint recommendations of the Lord Chancellor and the Secretary of State.

The NIRC will have an office in London but will be able to sit in more than one division and in various parts of the country. There will be right of appeal from the NIRC on the point of law only to the Court of Appeal, or in Scotland, to the Court of Session.

The NIRC is required to hear complaints about certain unfair industrial practices and breaches of duty imposed under the Act and is to adjudicate on them. It is empowered to determine the rights of parties; award compensation; make restraining orders; and review the results of ballots. In appropriate cases, the NIRC may authorise the presentation of a claim to the Industrial Arbitration Board.

The Act seeks to make the procedure of the NIRC as informal as practicable. Parties are, therefore, allowed to be represented by lawyers or by other persons including trade union representatives or to conduct their own case, as they wish.

The NIRC has a discretionary power to award costs, but only when it considers that the party concerned has acted frivolously or vexatiously, or there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings.

Before hearing a case, the NIRC is required to afford opportunities for conciliation between the parties.

The NIRC is not empowered to grant an interim order against anyone restraining him from industrial action unless all reasonable steps have been taken to inform him and to give him an opportunity of making representations.

The NIRC has the power to enforce its own decisions but collection of debts arising from cases heard by it is under the jurisdiction of county courts. [Secs. 99, 101-105, 112-119].

## Industrial Tribunals

Industrial Tribunals are in general required to deal with individual cases. Tribunals established under the Industrial Training Act, 1964 are to exercise the jurisdiction conferred on Industrial Tribunals by or under the Industrial Relations Act, and also, by the name of Industrial Tribunals, jurisdiction conferred on them by or under the Industrial Training Act, 1964, the Contracts of Employment Act, 1963, the Redundancy Payments Act, 1965, the Docks and Harbours Act, 1966, the Selective Employment Payment Act, 1966 and Equal Pay Act, 1970.

Industrial Tribunals are empowered to award compensation and give orders determining the rights of an individual or of an organisation. They are not empowered to make restraining orders. Industrial Tribunals are to continue to be as informal as possible and are required to afford opportunities for conciliation between the parties before hearing a case. [Secs. 100, 106-111, 113-114, 116, 118-119].

## Commission on Industrial Relations

The Donovan Commission had recommended the establishment of an independent Commission on Industrial Relations. Accordingly, a Commission on Industrial Relations was set up in 1969. The Industrial Relations Act puts the CIR on a statutory footing.

The responsibility for appointing the Chairman and members of the CIR vests with the Secretary of State. Questions of industrial relations either of a general character or relating to a particular industry or undertaking may be referred to the CIR by the Secretary of State alone or with other Ministers. These matters may relate to:

- (1) The manner in which employers or workers are, or ought to be, organised for the purpose of collective bargaining;
- (2) Procedure agreements, or the need for procedure agreements where they do not exist;
- (3) Any matter for which a procedure agreement can provide;
- (4) Recognition and negotiating rights for purposes of collective bargaining;

- (5) Disclosure of information by employers to their employees or to officials of trade unions or other organisations of workers having negotiating rights; and
- (6) Facilities for training in industrial relations or in collective bargaining, and provision for enabling persons to take advantage of such facilities without detriment to their acceptance or status as employees or as members of an organisation of workers.

The CIR is empowered to hold such inquiries as it considers necessary or desirable to enable it to carry out its duties; to examine witnesses on oath; to require persons to attend or produce documents or to furnish information relevant to the inquiry; and to conduct ballots.

The CIR is required to report to the Minister or Ministers making the reference and also to make an annual report to the Secretary of State. The annual report may include a general review of the development of collective bargaining in the U.K. and draw attention to any particular problems which appear to be of special importance. [Secs. 120-123].

### **Industrial Arbitration Board**

The Act renames the existing Industrial Court set up under the Industrial Courts Act, 1919 as the Industrial Arbitration Board to avoid confusion with the National Industrial Relations Court. In addition to dealing with claims under the Terms and Conditions of Employment Act, 1959, the Industrial Arbitration Board is required to arbitrate on claims referred to it by a registered trade union or a joint negotiating panel under the authority of the NIRC in cases where the employer has failed to disclose information to the union or to comply with a requirement to negotiate with it. [Secs. 124-127].

### **Conciliation**

The Act intends to promote voluntary settlement by conciliation of complaints concerning dismissal or infringement of the right to belong or not to belong to a trade union. The Act, therefore, empowers the Secretary of State to appoint Conciliation

Officers who are to be informed when such complaints have been made to the Industrial Tribunal. The Conciliation Officer is required to promote a settlement of the complaint before the matter comes up for hearing. [Sec. 146].

### RESTRICTIONS ON LEGAL PROCEEDINGS

The Act postulates that proceedings arising out of industrial disputes, particularly those involving allegations of unfair industrial practices, should be brought before the NIRC and Industrial Tribunals. Accordingly, the Act imposes the following restrictions on legal proceedings arising out of industrial disputes:

- (a) No court other than the NIRC is to entertain proceedings brought by a party to a collective agreement to enforce that agreement;
- (b) If proceedings in tort are brought before an ordinary court in respect of unfair industrial practices, the court will ordinarily have power to stay them;
- (c) There should be no actions in the tort on the ground that someone has induced another person, in furtherance of a trade dispute, to break a contract to which the other person is a party;
- (d) An agreement or combination to do any act in contemplation or furtherance of an industrial dispute is not actionable in tort if the act is not actionable in tort had it been done by one person;
- (e) The NIRC is not to entertain proceedings in tort.

The Act prevents any court, including the NIRC, from granting an order requiring any person to stay in work against his wishes or requiring anyone to go on strike.

The Act repeals Section 4 of the Conspiracy and Protection of Property Act, 1875 under which it is a criminal offence for an employee in electricity, gas or water undertaking wilfully or maliciously to break his contract of employment so as to deprive a community of their supply. The Act also amends the law relating to peaceful picketing so that picketing a person's home is not protected from civil or criminal proceedings. [Secs. 128-136].

## EMERGENCY PROCEDURES

### National Emergencies

The consultative document circulated before the introduction of the Bill in Parliament emphasised the government's responsibility to protect the public interest in certain disputes whatever merits the case might have. This could hitherto be done by proclaiming a state of emergency, and in the last resort, by calling on Armed Services to secure essential supplies and services. The efficacy of this safeguard was limited by the fact that the Emergency Powers Act, 1920 could not be invoked solely on the ground that national economy was endangered. Realising that this situation was unsatisfactory, it was proposed that the Secretary of State should have additional powers to intervene in disputes which might seriously threaten the national health, safety or economy, or the lives of a substantial portion of the community.

The Act accordingly empowers the Secretary of State to apply to the NIRC for an order restraining the calling, organising, procuring or financing a strike, lockout or other industrial action where an industrial dispute has begun, or is likely to begin, and its effects would be to deprive the community of the essentials of life or seriously endanger the national health, security or economy and where the deferment or discontinuance of the strike, lockout or industrial action would be conducive to a settlement of the dispute.

If the NIRC is satisfied that there is a serious risk to the community or the national economy, it would make an order restraining organisations and/or individuals from taking steps to call, induce, organise or finance industrial action including strike and lockout. The NIRC may also make an order requiring, by withdrawing or securing the withdrawal of any instructions already issued (including strike calls), the discontinuance or deferment of any industrial action during the period for which the order remains in force.

An order made by the NIRC is operative for a period of 60 days. During this period, the NIRC may make appropriate orders against other organisations or persons found to be instigating action relating to the same dispute, but these also expire at the

same time as the original order. The order may be renewed if the initial order was for a period of less than 60 days, but cannot be extended beyond, or renewed at or after the end of 60 days.

### Strike Ballots

Where an industrial action has begun or likely to begin in contemplation or furtherance of an industrial dispute, and which is likely to deprive the community or a substantial part of it, of the essentials of life, or to seriously endanger the national health, security or economy or the safety or livelihood of a substantial portion of the community or workers employed in the industry, and the Secretary of State doubts whether the employees want to strike or to participate in an irregular industrial action short of a strike and whether [they have had a reasonable opportunity to express their wishes, he may apply to the NIRC for an order for a secret ballot to be held. Before making such an application, the Secretary of State is required to consult the parties concerned.

If the NIRC is satisfied about the risk to the community or the substantial number of workers in the industry, it would make an order accordingly. The order will prohibit calling or inducing industrial action over the dispute until the ballot is held. The ballot is to be supervised and conducted by the CIR. The issue to be decided by the ballot is to be specified in the order which will also specify the persons to be balloted. The result of the ballot is to be notified to the NIRC and published. Whatever the outcome of the ballot, there is then nothing in the Act to prevent strike or other industrial action.

### OTHER PROVISIONS

Other provisions of the Act relate to such matters as the effects of a strike notice; dismissal of teachers in aided schools; certain actions under Race Relations Act, 1968; redundancy payments; determination of continuous employment; claims under Terms and Conditions of Employment Act, 1959; recovery of sums awarded in proceedings against trade unions or employers' associations; nominations for receiving payments in the event of death of a union member; winding up of organisations; restrictions on

registration under other Acts; immunity from disclosing confidential information; actions against employees relating to safeguarding of national security; restrictions on contracting out; making of regulations, rules and orders; and power to limit certain provisions of the Act to major undertakings.

#### TRADE UNIONS AND LABOUR RELATIONS ACT, 1974

The Trade Unions and Labour Relations Act, 1974 repealed the Industrial Relations Act, 1971 and contained new provisions relating to trade unions, employers' associations, workers and employers, including unfair dismissals and connected matters. This means that the Act of 1974 restored the methods, procedures and machinery for the prevention and settlement of industrial disputes as they obtained prior to the enactment of the Industrial Relations Act, 1971. The new provisions of the Act of 1974 concern mainly with: (a) the status and regulation of trade unions and employers' associations, (b) rights of workers as to arbitrary exclusion or expulsion from trade unions, (c) duties of trade unions and employers' associations to submit returns, (d) restrictions on the legal liability of trade unions in matters of trade disputes, (e) immunity of organisations of workers and employers from actions in tort, (f) excluding collective agreements from legal enforceability unless expressly provided in writing to the contrary, and (g) meanings of fair and unfair dismissals and rights of workers unfairly dismissed. The Act of 1974 also abolished the National Industrial Relations Court. The main thrust of this enactment is to do away with the restrictions imposed by the Act of 1971 on trade unions and their traditional methods and practices and to confer upon them certain rights and privileges so as to make them legally more secure.

## **CHAPTER 20**

# **LEGISLATION CONCERNING SETTLEMENT OF INDUSTRIAL DISPUTES IN INDIA**

### **LEGISLATION PRECEDING INDUSTRIAL DISPUTES ACT, 1947**

#### **The Employers and Workmen (Disputes) Act, 1860**

The first legislative measure dealing with the settlement of industrial disputes in India was the Employers and Workmen (Disputes) Act, 1860. The Act empowered magistrates to dispose of disputes concerning wages of workmen employed in railways, canals, and other public works, and made the breach of contract a criminal offence. The Act was repealed in 1932, though it ceased to be used even much earlier.

#### **The Indian Trade Disputes Act, 1929**

After the outbreak of the First World War, there was a phenomenal increase in the number of industrial disputes resulting in frequent strikes and lockouts. This necessitated the adoption of legislation for their effective settlement but no definite step was taken till 1929 when the Trade Disputes Act was passed. The Trade Disputes Act, which was patterned after the British Industrial Courts Act, 1919 and the Trade Disputes and Trade Unions Act, 1927, authorised the Central or Provincial Government to establish Courts of Inquiry and Boards of Conciliation

with a view to investigating and settling trade disputes, and rendered lightning strikes in public utility concerns a punishable offence.

If a trade dispute actually existed or was apprehended, the Provincial Government or Governor General in Council (in case of a Central Government Department or a railway company), on the request of both the parties to a dispute, could refer the matter to a Court of Inquiry or a Board of Conciliation. A Board of Conciliation was to consist of an independent Chairman and two or four other members who were to be either independent persons or persons appointed in equal numbers to represent the parties to the dispute. The Board was required to make a report to the appointing authority setting out, in the case of non-settlement, a full account of the facts and the findings and its own recommendations for an effective settlement of the dispute. A Court of Inquiry was to consist of an independent Chairman and such other independent persons as the appointing authority considered fit. The Court was required to report on its findings to the appointing authority.

In the public utility services (including railways; postal, telegraph and telephones services; power, light or water-supplying services; or any system of conservancy or sanitation), strikes and lockouts without notice were prohibited. No workman employed in a public utility service was to go on strike in breach of contract without having given to his employer within one month before striking, a not less than 14 days' previous notice in writing of his intention to go on strike. Similarly, no employer of a public utility service was to declare a lockout without having given to his workmen within one month before such lockout, a not less than 14 days' written notice of his intention to declare lockout. The Act also prohibited strikes and lockouts having any object other than the furtherance of a trade dispute and designed or calculated to inflict severe, general and prolonged hardship upon the community. Thus, political and general strikes were illegal under the Act. Applying money in the furtherance of an illegal strike or lockout or inciting others to participate in such an illegal strike or lockout was also prohibited.

### **The Indian Trade Disputes (Amendment) Act, 1932**

The Act of 1929 did not provide any protection to the members of a Board of Conciliation or a Court of Inquiry in respect of disclosure of confidential information relating to industrial establishments or trade unions. They could be sued and prosecuted in respect of disclosures whether wilful or accidental. In order to remedy the defect, the Indian Trade Disputes (Amendment) Act, 1932 was passed. The Act required persons desiring information to be kept confidential to make a request for the same. Members of a Court or a Board were liable to prosecution only in the case of wilful disclosure. In case of every prosecution, only a presidency or a first class magistrate could make a trial. Besides, a suit or prosecution could be instituted only on the previous sanction of the authority appointing the Court or Board.

### **The Trade Disputes (Extending) Act, 1934**

The Trade Disputes Act, 1929 was experimental for five years and was due to expire on May 7, 1934. With a view to making the Act permanent, the Trade Disputes (Extending) Act was enacted in April, 1934.

### **The Trade Disputes (Amendment) Act, 1938**

The Trade Disputes (Amendment) Act, 1938 was the direct outcome of the recommendations of the Royal Commission on Labour. The Act empowered the Central and Provincial Governments to appoint Conciliation Officers for "mediating in" and "promoting" the settlement of industrial disputes in any business, industry or undertaking. The Act enlarged the definition of public utility service so as to include power plants, tramway and water transport used for carrying passengers. Besides, the provisions regarding illegal strikes and lockouts were made less restrictive, and the definition of trade dispute was enlarged.

### **Rule 81(A) of the Defence of India Rules**

During the Second World War period, the Government

adopted certain emergency measures to prevent the war efforts from being impeded by industrial strife. Rule 81(A) which was added to the Defence of India Rules in January 1942, empowered the Government: (a) to prohibit strikes or lockouts (by general or special order) in connection with any trade dispute unless a reasonable notice was given, (b) to refer any dispute to conciliation or adjudication, (c) to require employers to observe specified terms and conditions, and (d) to enforce the decisions of the adjudicators. In pursuance of this Rule, the Government of India promulgated an order in August 1942 prohibiting strikes and lockouts without 14 days' previous notice, and during the pendency of conciliation or adjudication proceedings. The Rule remained in force till 1946, but the period of its operation was extended under the Emergency Powers (Continuance) Ordinance, 1946.

### **The Industrial Disputes Act, 1947**

At the time the Industrial Disputes Act, 1947 was being enacted, there was a considerable increase in industrial unrest owing to the "stress of post-war industrial re-adjustment."<sup>1</sup> The success of Rule 81(A) of the Defence of India Rules during war-time had led the government to feel that the problem of industrial unrest could be effectively tackled if the main provisions of the Rule were retained. Consequently, many provisions of the Rule, particularly those relating to public utility services, were incorporated in the new legislation. The Act, which came into force on April 1, 1947, introduced the principle of compulsory conciliation and arbitration of industrial disputes in certain cases, and created two new institutions namely, Works Committee and Industrial Tribunal.

### **Subsequent Amendments**

The Industrial Disputes Act, 1947 has been amended several times since it came into force. Thus an amendment introduced in 1949 aimed at removing difficulties created by piece-meal adjudication of disputes in banking and insurance companies having

#### **1. Statement of objects and reasons of the Bill.**

branches in more than one State, and replaced the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949. The Act was further amended by the Industrial Disputes (Appellate Tribunal) Act, 1950 which provided for the establishment of a Labour Appellate Tribunal, and introduced several amendments pertaining to enforcement of awards, power of the Tribunals to hear complaints regarding alteration in the service conditions of workers during pendency of proceedings, representation of parties, and recovery of money from employers. The Industrial Disputes (Amendment and Temporary Provisions) Act, 1951 was enacted primarily as a result of the judgement of the Supreme Court which declared the award of the All India Industrial (Bank Disputes) Tribunal as void on the ground of defects in the constitution of the Tribunal. An amendment made in 1952 replaced the Industrial Disputes (Amendment) Ordinance 1951, and widened the powers of the Government to refer industrial disputes to Board of Conciliation, Court of Inquiry and Industrial Tribunal.

The Industrial Disputes (Amendment) Act, 1953 prescribed conditions under which workers might be laid-off and retrenched and the compensation to be paid to laid-off and retrenched workmen. An amending Act of 1954 extended the provisions concerning lay-off and retrenchment in respect of plantation workers. Later, the Industrial Disputes (Amendment) Act, 1956 specified the circumstances under which compensation for lay-off could be extended beyond the first 45 days of lay-off, and made special provisions in respect of workers' right to compensation in the event of transfer of undertakings.

A number of amendments were introduced in 1964 and 1965. The important amendments in 1964 related to declaration of air transport services as a permanent public utility service; declaration of any industry as a public utility service by the Central and State Governments in their respective jurisdictions; appointment of an umpire in the event of differences of opinion between the arbitrators; and termination of an award or settlement by proper notice only by a majority of workmen. The amending Act of 1965 brought Indian Airlines and Air India Corporations and a few other Corporations of all-India importance within the jurisdiction of the Central Government. An important provision made available

the machinery under the Act in cases of individual dismissals and discharges, which hitherto could not be taken up for conciliation, arbitration or adjudication unless they were sponsored by a union or by a number of workmen. A few changes were subsequently introduced in 1971, 1972 and 1976. The main provisions of the Act as they stand amended up-to-date are summarised below.

### Basic Elements of Public Policy

A piece of legislation is intended to reflect and execute the public policy in respect of the matters it deals with. The Industrial Disputes Act, 1947 is, therefore, a reflection of the public policy in regard to the settlement of industrial disputes in the country. It is worthwhile to have a brief glimpse of the public policy as embodied in this law. This policy consists of the following basic elements:

- (1) The parties to an industrial dispute are free to settle their dispute without any let or hindrance in any manner or method they like and determine the terms of the settlement, but without endangering industrial peace through industrial action.
- (2) The State is prepared and has set up a machinery to assist the parties in the peaceful settlement of their dispute by providing conciliation services.
- (3) If, in spite of this assistance, the parties fail to come to a settlement, the State expects and requires the parties to give it a reasonable time to make further efforts for a peaceful settlement before they go into industrial action.
- (4) Yet again, if the parties still persist in their decision to resort to industrial action the State reserves to itself the right to bring the matter before adjudication tribunals, declare their awards binding and prevent industrial action resulting in work-stoppages.
- (5) The State expects the parties to make reasonable efforts to prevent industrial disputes from arising and, therefore, requires the employers to constitute Works Committees in their enterprises.

The Act is designed to put this policy into practice. If, in spite of the existence of this Act, industrial actions have taken place, it

is not so because the Act is deficient, but because the economic and political factors operating in the country are beyond the control of any industrial relations legislation. The widespread prevalence of strikes and lockouts till recently is also an indication of the fact that industrial peace cannot be legislated into practice so long as the economic and political system permits the parties the right to industrial action for the settlement of the conflicting claims.

## THE INDUSTRIAL DISPUTES ACT, 1947 (MAIN PROVISIONS)

### Some Important Definitions

**“Industrial Dispute”**—Any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. [Sec. 2(k)]. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. [Sec. 2-K].

**“Strike”**—A cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. [Sec. 2(q)].

**“Lockout”**—The closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. [Sec. 2(l)].

**“Workman”**—Any person (including an apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under the Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or

retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act 1934; or

(ii) who is employed in police service as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. [Sec. 2(s)].

“Lay-off”—The failure, refusal, or inability of an employer on account of shortage of coal, power, or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reasons to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched. Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself, is deemed to have been laid-off for that day. However, if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment, he is deemed to have been laid-off only for one-half of that day. In case he is not given employment even after so presenting himself, he is not deemed to have been laid-off for the second half of the shift for the day, and is entitled to full basic wages and dearness allowance for that part of the day. [Sec. 2(kkk)].

“Retrenchment”—The termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include: (a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or  
 (c) termination of the service of a workman on the ground of continued ill health. [Sec. 2(oo)].

“Settlement”—A settlement, arrived at in the course of a conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties in the prescribed manner and a copy of the same has been sent to an officer authorised in this behalf by the appropriate government and the Conciliation Officer. [Sec. 2(p)].

“Appropriate government”—(a) Central Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any controlled industry as specified by the Central Government or in relation to an industrial dispute concerning Industrial Finance Corporation of India, the Employees’ State Insurance Corporation, the Indian Air Lines and Air India Corporation, the Life Insurance Corporation of India, the Agricultural Refinance Corporation, Deposit Insurance Corporation, Unit Trust of India, a banking or an insurance company, a mine, an oilfield, a Cantonment Board or a major port; and

(b) State Government in relation to any other industrial dispute. [Sec. 2(a)].

“Public Utility Service”—(i) Any railway service or any transport service for the carriage of passengers or goods by air; (ii) any service in or in connection with the working of, any major port or dock; (iii) any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends; (iv) any postal, telegraph or telephone service; (v) any industry which supplies power, light or water to the public; and (vi) any system of public conservancy or sanitation. The appropriate government may, on being satisfied that public emergency or public interest so requires, declare any of the following industries (specified in the first Schedule of the Act) as a public utility service by notification in the official gazette for a period not exceeding six months at a time:

(1) Transport (other than railways) for the carriage of passengers or goods by land or water; (2) banking; (3) cement; (4) coal; (5) cotton textiles; (6) foodstuffs; (7) iron and steel; (8) defence establishments; (9) service in hospitals and dispensaries; (10) fire brigade service; (11) India Government mints; (12) India Security Press; (13) copper mining; (14) lead mining; (15) zinc mining; (16) iron ore mining; (17) service in any oil field; (18) uranium industry; and (19) pyrites mining.

### AUTHORITIES AND REFERENCE OF DISPUTES

The authorities provided under the Act include: (1) Works Committee, (2) Conciliation Officer, (3) Board of Conciliation, (4) Court of Inquiry, (5) Labour Court, (6) Tribunal and (7) National Tribunal. The last three are the authorities for the adjudication of industrial disputes.

#### (1) Works Committee<sup>2</sup>

The appropriate government is empowered to make general or special order requiring the employer to constitute a Works Committee in any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months.

#### *Constitution*

A Works Committee is to consist of representatives of employers and workmen engaged in the establishment, so however, that the number of workers' representatives is not less than that of employers' representatives. This means that the number of workers' representatives can exceed the number of employers' representatives. The representatives of the workmen are to be chosen from amongst the workmen engaged in the establishment in consultation with their registered trade union, if any.

#### *Functions*

A Works Committee is required to promote measures for securing and preserving amity and good relations between the

2. See also Chapter 12.

employers and workmen and, in order to achieve the end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters. [Sec. 3].

## (2) Conciliation Officers<sup>3</sup>

The appropriate government is empowered to appoint Conciliation Officers by notification in the official gazette for mediating in and promoting the settlement of industrial disputes. The number of Conciliation Officers to be appointed is to be determined by the appropriate government. A Conciliation Officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries either permanently or for a limited period. [Sec. 4].

### *Duties of Conciliation Officers*

Where any industrial dispute exists or is apprehended, the Conciliation Officer may, or where the dispute relates to a public utility service and a notice of strike or lockout as required under Section 22 of the Act has been given, must hold conciliation proceedings in the prescribed manner. He is required to investigate the dispute and all matters affecting its merits for promoting a right settlement. A Conciliation Officer may take appropriate steps for inducing the parties to a fair and amicable settlement of the dispute. If a settlement is arrived at during conciliation proceedings, he must send a copy of the report and the memorandum of settlement signed by the parties to the appropriate government or an officer authorised by it. In case no settlement is arrived at, he is required, as soon as possible after the close of investigation, to send to the appropriate government, full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about its settlement, and the reasons on account of which a settlement could not be arrived at. The Conciliation Officer is ordinarily required to submit his report within fourteen days of the commencement of the conciliation proceedings, but the time for the submission of the report may be extended further on the written request of the parties

3. See also Chapter 12.

to the dispute. Where a settlement is not reached, the appropriate government, after considering the report of the Conciliation Officer, may refer the dispute to a Board of Conciliation, Labour Court, Tribunal or National Tribunal and in case the government does not make any such reference, it has to communicate to the parties accordingly. [Sec. 12].

### *Powers of Conciliation Officers*

A Conciliation Officer is empowered, after giving a reasonable notice, to enter the premises occupied by any establishment for the purpose of inquiry into any existing or apprehended dispute related to the establishment. He may also inspect any document relevant to the dispute or for verifying the implementation of any award. He enjoys the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of compelling the production of documents, and is deemed to be a public servant under Section 21 of the Indian Penal Code. [Sec. 11]. A Conciliation Officer is, however, not empowered to enforce the attendance of the parties to a dispute.

### **(3) Boards of Conciliation<sup>4</sup>**

The appropriate government may, as occasion arises, constitute a Board of Conciliation for promoting settlement of industrial disputes.

#### *Composition*

A Board is to consist of an independent Chairman and two or four members to be appointed in equal number representing the parties to the dispute. The members representing the parties are to be appointed on the recommendations of the parties concerned, but in case of their failure to make such recommendations, the appropriate government must appoint on its own, persons representing the parties. A Board may function notwithstanding the absence of the Chairman, or any of its members or any vacancy in its number but in case the appropriate government makes a notification to the Board that the services of the Chairman or any of its members have ceased to be available, the Board is not to function

4. See also Chapter 12.

so long as a new Chairman or any such member, as the case may be, is not appointed. [Sec. 5].

### *Reference of disputes to Boards of Conciliation*

Where the appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute to a Board of Conciliation for promoting a settlement. In case the parties to an industrial dispute make an application in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board of Conciliation, the appropriate government is required, on being satisfied that the persons making such an application represent the majority of each party, to make the reference accordingly. Where the dispute is referred to the Board, the appropriate government may prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of reference. [Sec. 10].

### *Duties and Powers*

When a dispute has been referred to the Board of Conciliation, it is required to endeavour to bring about a settlement and to investigate the dispute and all matters affecting its merit and right settlement. It may take suitable steps to induce the parties to come to a fair and amicable settlement. If a settlement is arrived at, the Board is required to send a report and a memorandum of the settlement signed by the parties to the dispute to the appropriate government. If no such settlement is arrived at, the Board is required, as soon as practicable after the close of the investigation, to send to the appropriate government a full report setting forth the proceedings and steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement, together with a full statement of such facts and circumstances and the reasons on account of which a settlement could not be arrived at, and also its own recommendations for the determination of the dispute. The Board is required to submit its report within two months of the date of the reference of the dispute or within such shorter period as determined by the appropriate government. The appropriate government may extend the time of the submission of the report to a period not exceeding two

months in the aggregate. The date of submission of the report may also be extended to such date as may be agreed on in writing by all the parties to the dispute. If the appropriate government, after the receipt of the report of the Board of Conciliation in respect of a dispute relating to public utility service, does not make a reference to a Labour Court, Tribunal or National Tribunal, it is required to communicate to the parties concerned the reasons for not doing so. [Sec. 13].

The report of the Board of Conciliation is to be in writing and is to be signed by all the members of the Board but any member may record any minute of dissent from a report or from any of its recommendations. Every report together with any minute of dissent has to be published by the appropriate government within a period of thirty days from the date of its receipt. [Secs. 16-17].

A member of the Board of Conciliation may, for the purpose of inquiry into any existing or apprehended dispute, and after giving a notice, enter the premises occupied by any establishment to which the dispute relates. Every Board enjoys the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses, and in respect of other prescribed matters. An inquiry by a Board of Conciliation is to be deemed as a judicial inquiry within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. All members of a Board are public servants within the meaning of Section 21 of the Indian Penal Code. [Sec. 11].

### *Commencement and conclusion of conciliation proceedings*

Conciliation proceedings are deemed to have been commenced on the date on which a notice of strike or lockout as required under Section 22 of the Act is received by the Conciliation Officer or on the date of the order referring the dispute to a Board of Conciliation. A conciliation proceeding is deemed to have been concluded when: (a) a memorandum of the settlement is signed by the parties to the dispute (in case a settlement is arrived at), or (b) the report of the Conciliation Officer is received by the appropriate government or when the report of the Board has been published (where no settlement is arrived at), or (c) a reference is

made to a Court of Inquiry, Labour Court, Tribunal or National Tribunal during the pendency of conciliation proceedings. [Sec. 20].

### *Period of operation of settlement*

A settlement comes into operation on the date agreed upon by the parties to the dispute, and in case no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. A settlement is binding for such period as is agreed upon by the parties and, if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and it is to continue to be binding on the parties till the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. No such notice is to have effect unless it is given by a party representing the majority of persons bound by the settlement. [Sec. 19].

### *Persons on whom settlements are binding*

A settlement arrived at by the agreement between the employer and workmen otherwise than in the course of conciliation proceeding is binding on the parties to the agreement. A settlement arrived at in the course of conciliation proceedings under the Act is binding on: (i) all parties to the industrial dispute, (ii) all other parties summoned to appear in the proceedings as parties to the dispute (unless the Board of Conciliation records the opinion that they were so summoned without proper cause), (iii) where such a party is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates, and (iv) where such a party is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or its part. [Sec. 18].

## **(4) Court of Inquiry**

The appropriate government is empowered to constitute a Court of Inquiry, as occasion arises, for the purpose of "inquiring

into any matter appearing to be connected with or relevant to an industrial dispute."

A Court of Inquiry may consist of either one independent person only or more persons but where it consists of two or more persons, one of them is to be appointed as the Chairman. A Court of Inquiry may function notwithstanding the absence of the Chairman or any of its members or any vacancy in its number but where the appropriate government makes a notification to the Court that the services of the Chairman has ceased to be available, the Court is not to act until a new Chairman is appointed. A Court of Inquiry is required to inquire into the matters referred to it and report to the appropriate government ordinarily within a period of six months from the commencement of its inquiry.

The report of the Court of Inquiry is to be in writing and signed by all its members but any of its members is free to record any minute of dissent from any of its recommendations. Every report of the Court of Inquiry, together with any minute of dissent, is to be published by the appropriate government within a period of thirty days from the date of the receipt of the report. A member of a Court of Inquiry may, for the purpose of inquiry into any existing or apprehended dispute, enter the premises occupied by any establishment to which the dispute relates but a reasonable notice is necessary. Every Court of Inquiry has the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses and in respect of other prescribed matters. Every enquiry or investigation by a Court of Inquiry is to be deemed as a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. A Court of Inquiry may appoint one or more persons having special knowledge of the matter under consideration as assessor or assessors to advise it in the proceeding. All the members of a Court of Inquiry are deemed to be public servants under Section 21 of the Indian Penal Code. [Secs. 6, 11, 14 and 16].

#### **(5) Labour Court**

The appropriate government may constitute one or more

Labour Courts for the adjudication of industrial disputes relating to any matter provided in the Second Schedule of the Act which includes: (i) the propriety or legality of an order passed by an employer under the standing orders, (ii) the application and interpretation of standing orders, (iii) discharge or dismissal of workmen, including reinstatement of, or grant of relief to, workmen wrongfully dismissed, (iv) withdrawal of any customary concession or privilege, (v) illegality or otherwise of a strike or lockout, and (vi) all matters other than those mentioned in the Third Schedule which specifies the matters to be within the jurisdiction of Industrial Tribunals.

A Labour Court is to consist of one person only. A person is not qualified to be appointed as the presiding officer of a Labour Court unless: (a) he is or has been, a Judge of a High Court, or (b) he has been a District Judge or an Additional District Judge for a period of not less than three years, or (c) he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 or of any Tribunal, for a period of not less than two years, or (d) he has held any judicial office in India for not less than seven years, or (e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years. [Sec. 7].

#### (6) Tribunals

The appropriate government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter specified either in the Second Schedule (mentioned above) or in the Third Schedule which includes: (i) wages, including the period and mode of payment; (ii) contribution paid or payable by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force; (iii) compensatory and other allowances; (iv) hours of work and intervals; (v) leave with wages and holidays; (vi) starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders; (vii) classification by grades; (viii) withdrawal of any customary concession or privilege or change in usage; (ix) introduction of new rules of discipline or alteration of existing rules, except insofar as

they are provided in standing orders; (x) rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; and (xi) any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control.

A Tribunal is to consist of one person only to be appointed by the appropriate government. A person is qualified for appointment as the presiding officer of a Tribunal only when: (a) he is or has been a Judge of a High Court, or (b) he has been District Judge or Additional District Judge for a period of not less than three years, (c) he has held the office of the Chairman or any member of Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 or of any Tribunal for a period of not less than two years. The appropriate government may also appoint two assessors to advise the Tribunal in the proceeding before it. [Sec. 7-A].

#### **(7) National Tribunals**

The Central Government is empowered to constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which in its opinion involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes. The National Industrial Tribunal is to consist of one person only to be appointed by the Central Government. A person is qualified for appointment as the presiding officer of a National Industrial Tribunal if: (a) he is or has been a Judge of a High Court, (b) he has held the office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 for a period of not less than two years. The Central Government may also appoint two assessors to advise the National Tribunal in the proceeding before it. [Sec. 7-B]

#### **Disqualifications for the Presiding Officers of Labour Courts or Tribunals**

A person, who is not independent or has attained the age

of sixty five years, is not to be appointed or to continue as the presiding officer of a Labour Court, Tribunal, or National Tribunal. [Sec. 7-C].

### Reference of Disputes to Adjudication Authorities

Where any industrial dispute exists or is apprehended, the appropriate government may, by order in writing, refer the dispute to a Labour Court, Tribunal, or National Tribunal for adjudication. As mentioned earlier, the Labour Court is empowered to adjudicate upon matters specified in the Second Schedule, and a Tribunal on those specified in either Second or Third Schedule. However, where a dispute relates to a matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate government may refer it to a Labour Court. Where a notice of strike or lock-out has been given in a dispute relating to a public utility service, the appropriate government must refer the dispute to a Board of Conciliation or Labour Court or Tribunal "notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced", unless it is of the view that the notice has been frivolously or vexatiously given or it is inexpedient to make such a reference.

In case a dispute involves any question of national importance or is of such nature that industrial establishments situated in more than one State are likely to be interested in or affected by the dispute, the Central Government may at any time refer the dispute or any relevant matter related to the dispute to the National Tribunal, even if it is not the appropriate government in relation to the dispute.

If the parties to an industrial dispute make a request in the prescribed manner to refer the dispute to a Labour Court, Tribunal or National Tribunal, the appropriate government is required to make such reference, but it may refuse to do so if it is satisfied that the persons applying for the reference do not represent the majority of the party.

In case the points of dispute for adjudication have been specified by the appropriate government, the adjudication authorities are to confine their award to those points and the incidental matters only. Where any dispute has already been referred to an

adjudication authority, the appropriate government, on the satisfaction of certain conditions, may also include other establishments (not originally covered) which are likely to be interested in or affected by that dispute, but such a reference has to be made before the award is submitted.

If a dispute involving any question of national importance or affecting industrial establishments situated in more than one State has been referred to a National Tribunal, no Labour Court or Tribunal has jurisdiction to adjudicate upon any matter referred to the National Tribunal. Where an industrial dispute has been referred to an adjudication authority, the appropriate government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of the reference. [Sec. 10].

### **Voluntary Reference of Disputes to Arbitration**

In case an industrial dispute exists or is apprehended, the employer and the workmen may refer it to an arbitrator or arbitrators mutually agreed upon by them, but such a reference can be made before the dispute has been referred by the appropriate government to an adjudication authority. An arbitrator may also be appointed from amongst the presiding officers of Labour Courts, Tribunals or National Tribunals. In case an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, it must also provide for the appointment of another person as umpire. If the arbitrators are equally divided in their opinion, the award of the umpire is to prevail. An arbitration agreement is to be in the prescribed form and signed by the parties. A copy of the arbitration agreement must be forwarded to the appropriate government and the Conciliation Officer and must be published by the appropriate government in the official gazette within fourteen days of the receipt of the copy.

Where an industrial dispute has been referred to arbitration and the appropriate government is satisfied that the persons making the reference represent the majority of each party, it may issue a notification in the prescribed manner. When any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned with the dispute must be

given an opportunity of presenting their case before the arbitrators.

It is the duty of the arbitrator to investigate the dispute and submit to the appropriate government the arbitration award signed by him. Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate government may, by order, prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of reference. [Sec. 10 A].

### **Procedure, Powers and Duties of Labour Courts, Tribunals and National Tribunals**

A Labour Court, Tribunal and National Tribunal are authorised to lay down their own procedures. The presiding officer of a Labour Court, Tribunal or National Tribunal may enter the premises occupied by any establishment for inquiring into any existing or apprehended industrial dispute but a reasonable notice has to be given. These adjudication authorities have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of : (i) enforcing the attendance of any person and examining him on oath, (ii) compelling the production of documents and material objects, (iii) issuing commission for the examination of witnesses, and (iv) in respect of such other matters as may be prescribed. Every inquiry or investigation by these authorities is to be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. They may also appoint an assessor or assessors to advise them in the proceedings before them. A presiding officer of a Labour Court, Tribunal or National Tribunal is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code and is also empowered to decide the costs of any proceedings and to determine the persons liable to pay the costs and the persons entitled to receive them. Every Labour Court, Tribunal and National Tribunal is deemed to be a civil court for the purposes of Sections 480, 482 and 484 of the Code of Criminal Procedure, 1898. [Sec. 11].

In case an industrial dispute relating to discharge or dismissal of a workman has been referred to the Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings the authority is satisfied that the order

of discharge or dismissal was not justified, it may by its award set aside the order. The authority may also direct the reinstatement of the workman on such terms and conditions as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal. However, in dealing with cases of discharge or dismissal, the authority is required to rely only on the materials on record and is not to take any fresh evidence in relation to the matter. [Sec. 11 A].

The adjudication authorities are required to hold their proceedings expeditiously and to submit their awards to the appropriate government as soon as practicable. [Sec. 15].

### **Commencement and Conclusion of Award**

The proceedings before an arbitrator, the Labour Court or the Tribunal are deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be. Such proceedings are to be deemed to have been concluded on the date on which the award becomes enforceable. [Sec. 20].

### **Publication and Commencement of Award**

An award of a Labour Court, Tribunal or National Tribunal is to be in writing and signed by the presiding officer. Every award of an arbitrator or an adjudication authority is to be published by the appropriate government within a period of thirty days from the date of its receipt. [Sec. 17].

An arbitration or adjudication award comes into force on the expiry of thirty days from the date of its publication by the appropriate government. If the appropriate government is of the opinion that "it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award", it may declare that the award will not become enforceable on the expiry of the period of thirty days as mentioned above. When such a declaration has been made the government may, within ninety days from the date of the publication of award, make an order rejecting or modifying the award. However, the award, together with a copy of the order, is to be laid on the first available opportunity before the legislature of

the State (if the order has been made by the State Government) or before the Parliament (if the order has been made by the Central Government). When an award is placed before the State Legislature or Parliament, it is enforceable on the expiry of fifteen days from the date on which it was so laid. In case no order is made by the government, the award is enforceable on the expiry of the period of ninety days as mentioned above. In case the government specifies a date on which the award is to come into force, it is enforceable from the date so specified; in other cases, when it is otherwise enforceable. [Sec. 17 A].

### **Period of Operation of Awards**

An award is ordinarily to remain in operation for a period of one year from the date on which it becomes enforceable, but such a period may be reduced by the appropriate government. The appropriate government, before the expiry of such period, may extend the period of operation of the award for not more than one year at a time, but the total period of the operation of the award is not to exceed three years from the date on which it comes into operation. The appropriate government may also refer an award or a part of it to any of the adjudication authorities constituted under the Act for deciding the necessity of shortening the period of operation of the award if it considers that there has been a material change in the circumstances on which the award was based. The decision made by the adjudication authority in this regard is final. Even after the expiry of the period of operation of an award, it is to continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party intimating its intention to terminate the same. No such notice is, however, to have effect, unless it is given by a party representing the majority of persons bound by the award. [Sec. 19].

### **Persons on Whom an Award is Binding**

An arbitration award in respect of which no notification has been issued by the appropriate government is binding on the

parties to the agreement referring the dispute to arbitration. An arbitration award in respect of which a notification has been issued or an award of a Labour Court, Tribunal or National Tribunal is binding on: (i) all parties to the industrial dispute, (ii) all other parties summoned to appear in the proceedings unless the arbitrator or the adjudication authority records its opinion that they were so summoned without proper cause, (iii) where a party is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates, and (iv) where a party is composed of workmen, all persons who were employed in the establishment or its part (to which the dispute relates) on the date of the dispute and all persons who subsequently become employed in that establishment. [Sec. 18].

### **Penalty for Breach of Settlement or Award**

A person committing a breach of any term of a settlement or award binding on him is punishable with imprisonment extending up to six months or with fine or with both. In case the breach is a continuing one, he is liable to pay a further fine extending up to two hundred rupees for every day of the breach after the first conviction. [Sec. 29].

### **Certain Matters to be Kept Confidential**

When a trade union or any individual firm or company carrying on a business requests any of the authorities constituted under the Act to treat certain informations as confidential, it is the obligation of such authorities to keep them confidential, unless the person concerned gives written consent to disclose such informations. A person wilfully disclosing such confidential informations is punishable on a complaint made by or on behalf of a trade union or individual business with imprisonment extending up to six months or with fine up to one thousand rupees or with both. However, no such information may be kept confidential for the purpose of prosecution under Section 193 of the Indian Penal Code. [Secs. 21 and 30].

## PROHIBITION OF STRIKES AND LOCKOUTS

### General Prohibition of Strikes

No workman employed in any industrial establishment is allowed to go on strike in breach of contract: (a) during the pendency of conciliation proceedings before a Board of Conciliation and seven days after the conclusion of such proceedings, or (b) during the pendency of proceedings before a Labour Court, Tribunal, or National Tribunal, and two months after the conclusion of such proceedings, or (c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings (if the required notification prohibiting a strike has been issued by the government), or (d) during any period in which a settlement or award is in operation in respect of any matter covered by the settlement or award, as the case may be. [Sec. 23].

### Prohibition of Strikes in Public Utility Services

The provisions pertaining to general prohibition of strikes [Sec. 23] apply in respect of public utility services also. However, the Act imposes certain additional restrictions on strikes in the public utility services. These additional restrictions are discussed below.

A person employed in a public utility service must not go on strike in breach of contract: (a) without giving to the employer a notice of strike within six weeks before striking, or (b) within fourteen days of giving such notice, or (c) before the expiry of the date of strike specified in the notice, or (d) during the pendency of conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The notice of strike has to be given by such number of persons to such person and in such manner as may be prescribed by the appropriate government. If an employer receives a number of notices of strike on any day, he is required to report the matter to the appropriate government or an authority specified by it within five days of the date of receipt of such notice. A notice of strike is not necessary where it is already in existence in the public utility service, but in this case, the employer is required to send intimation of such a strike

o the authority specified by the appropriate government on the day on which it was declared. [Sec. 22].

### Prohibition of Lockouts

The provisions regarding the prohibition of lockouts are the same as those for the prohibition of strikes. [Secs. 22-33].

### Illegal Strikes and Lockouts

A strike or lockout is illegal in the following cases:

(1) if it is commenced or declared in contravention of the provisions relating to general prohibition of strikes or lockouts or those applying to public utility services [Secs. 22-23];

(2) if it is continued in contravention of an order made under Sub-section (3) of Section 10 which says, "Where an industrial dispute has been referred to a Board, Labour Court, Tribunal, or National Tribunal, the appropriate government may by order prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of reference"; and

(3) if it is continued in contravention of an order made under Section 4A of Section 10-A which provides, "Where an industrial dispute has been referred to arbitration and a notification has been issued..., the appropriate government may, by order, prohibit the continuance of any strike or lockout in connection with such dispute which may be in existence on the date of reference."

Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board of Conciliation, an arbitrator or an adjudication authority, the continuance of such strike or lockout is not illegal, provided that it was at its commencement not in contravention of the Act or its continuance specifically prohibited. A lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout is not illegal. [Sec. 24].

The maximum penalty for commencing, continuing or otherwise acting in furtherance of an illegal strike is imprisonment for one month or fine of fifty rupees or both. Similar offences pertain-

ing to an illegal lockout are punishable with an imprisonment extending up to one month or with fine up to one thousand rupees or with both. [Sec. 26]. A person who instigates or incites others to take part in or otherwise acts in furtherance of an illegal strike or lockout is punishable with imprisonment extending up to six months or with fine up to one thousand rupees or with both. [Sec. 27].

### **Prohibition of Financial Aid to Illegal Strikes and Lockouts**

The Act prohibits expending or applying any money in direct furtherance or support of any illegal strike or lockout. [Sec. 25]. Maximum penalty for the offence is imprisonment for six months or fine of one thousand rupees or both. [Sec. 28].

## **LAY-OFF AND RETRENCHMENT**

### **Lay-Off**

#### *Application*

The provisions of the Act in respect of lay-off do not apply to an industrial establishment: (a) in which less than fifty workmen on the average per working day have been employed in the preceding calendar month, or (b) which is of a seasonal character or in which work is performed only intermittently. The decision of the appropriate government in respect of the determination of the seasonal or intermittent character of an industry is final. For the purposes of the provision relating to lay-off, "industrial establishment" means: (a) a factory as defined in the Factories Act, 1948, or (b) a mine as defined in the Mines Act, 1952, or (c) a plantation as defined in the Plantation Labour Act, 1951. [Sec. 25 A].

### **Right of Workmen Laid-Off for Compensation**

If a workman, other than a badli or casual workman, whose name is borne on the muster rolls and who has completed one year of continuous service, is laid-off, he is entitled to compensation which is to be equal to fifty per cent of the total basic wages and dearness allowance that would have been payable to him had he not been so laid off, but no allowance is to be made for such weekly holidays that may intervene.

If during any period of twelve months a workman is laid off

for more than 45 days, no compensation is payable in respect of any period of lay-off after the expiry of first 45 days (if there is an agreement to that effect between the workman and the employer). However, it is lawful for the employer to retrench the workman at any time after the expiry of the first 45 days of the lay-off, and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment. For the purposes of the provisions concerning the right of laid-off workmen for compensation, "badli workman" means, "a workman who is employed in an industrial establishment in place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such...if he has completed one year of continuous service in the establishment." [Sec. 25 C].

### **Cases in Which Workmen are Not Entitled to Lay-Off Compensation**

A workman is not entitled to compensation for lay-off under the following conditions:

(a) if he refuses to accept any alternative employment in the same establishment from which he has been laid-off, or in any other establishment belonging to the same employer situated in the same town or village or situated within a radius of five miles from the establishment to which he belongs (if in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman), provided that wages which would normally have been paid to the workman are offered for the alternative employment also;

(b) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day; and

(c) if such laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment. [Sec. 25E].

### **Retrenchment**

#### ***Conditions Precedent to Retrenchment***

The Act prohibits an employer from retrenching any workman

employed in an industry who has been in continuous service for not less than one year, except under the following conditions:

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice (no such notice is necessary if the retrenchment is under an agreement which specifies a date for the termination of service);

(b) the workman has been paid at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part of it in excess of six months; and

(c) a notice has been served in the prescribed manner on the appropriate government or an authority specified by it by notification in the official gazette. [Sec. 25F).

### **Compensation for Retrenchment in Case of Transfer of Undertakings**

Where the ownership or management of an undertaking is transferred to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer is entitled to a prescribed notice and compensation as if he had been retrenched. However, a workman is not entitled to compensation merely because of the change of employer, unless: (a) there has been an interruption in the service of the workman by reason of the transfer, (b) the terms and conditions of service applicable to him after the transfer are less favourable to him than those applicable immediately before the transfer, and (c) the new employer, under the terms of agreement or otherwise, is not legally liable to pay to the workman, retrenchment compensation on the ground that his service has been not continuous and has been interrupted by the transfer. [Sec. 25 FF].

### **Compensation for Retrenchment in the Case of Closing Down of Undertakings**

Where an undertaking is closed down for any reason, every workman who has been in continuous service for not less than one

year in that undertaking immediately before the closure, is entitled to the prescribed notice and compensation, as if he had been retrenched. However, where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation is not to exceed his average pay for three months. An undertaking which is closed down by reason merely of financial difficulties (including financial losses) or accumulation of undisposed stocks, or the expiry of the period of lease or the licence granted to it or exhaustion of minerals in a particular area is not deemed to have been closed down on account of unavoidable circumstances beyond the control of the employer. In case an industrial establishment set up for the construction of building, bridges, roads, canals, dams or other construction work is closed down on account of the completion of work within two years from the date of its establishment, no workman is entitled to retrenchment compensation, but where the work is not completed within two years, he is entitled to notice and compensation for every completed year of continuous service or any part in excess of six months. [Sec. 25 FFF].

### **Procedure for Retrenchment**

In case any workman in an industrial establishment is to be retrenched, the employer is ordinarily required to retrench the workman who was the last person to be employed in that category unless the employer records the reasons for retrenching any other workman. The employer may also retrench any other workman in case there is an agreement between him and the employer in this regard. [Sec. 25 G].

### **Re-employment of Retrenched Workmen**

In case an employer proposes to employ persons in an industrial establishment, he is required to give an opportunity to the retrenched workmen for re-employment. The retrenched workmen are to have preference over other persons if they offer themselves for re-employment. [Sec. 25 H].

**Definition of Continuous Service for the Purposes of Lay-off and Retrenchment Compensation**

For the purposes of the provisions of the Act pertaining to lay-off and retrenchment, a workman is said to be in continuous service for a period, if he is, for that period, in uninterrupted service, including service interrupted on account of sickness or authorised leave or an accident or a legal strike or a lock-out or a cessation of work which is not due to any fault on the part of the workman. A workman is also said to have been in continuous service for one year if, during a period of twelve months preceding the date with reference to which calculation is to be made, he has actually worked under the employer for not less than (a) 190 days in the case of a workman employed below ground in a mine, and (b) 240 days in any other case. Similarly, he is deemed to have been in continuous service for six months if he has actually worked under his employer for not less than (a) 95 days in case he is employed below ground in a mine, or (b) 120 days in any other case. For the purposes of satisfying a continuous service of one year or six months, the number of days on which a workman has actually worked under an employer is to include the days on which (a) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment Standing Orders Act, 1946 or under this Act, or under any law applicable to the industrial establishment, (b) he has been on leave with full wages, earned in the previous years, (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and (d) in the case of a female, she has been on maternity leave not exceeding twelve weeks. [Sec. 25 B].

**Duty of an Employer to Maintain Muster Rolls of Workmen**

The Act requires the employer of an industrial establishment to maintain a muster roll of workmen, and to provide for making of entries by workmen who may present themselves for work at the establishment at the appointed time during normal working hours. [Sec. 25 D].

## **Effects of Laws Inconsistent with the Provisions Concerning Lay-off and Retrenchment Under the Act**

The provisions of the Act pertaining to lay-off and retrenchment are to have effect notwithstanding anything inconsistent in the provisions of any other law in force. However, where under the provisions of any other Act or rules, orders or notifications issued under them, or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he is entitled under this Act, he is to continue to get the more favourable benefits in respect of that matter. The rights and liabilities of employers and workmen relating to lay-off and retrenchment provided under the Act are also to apply in States where separate laws concerning settlement of industrial disputes are in force. [Sec. 25 J].

### **OTHER PROVISIONS**

#### **Change of Conditions of Service During Pendency of Proceedings**

In case any dispute is pending before a conciliation or adjudication authority, the employer must not (a) alter, to the prejudice of the workmen concerned in the dispute, the conditions of service applicable to them immediately before the commencement of the proceedings in regard to any matter concerned with the dispute, or (b) discharge or punish any workmen concerned with the dispute for any misconduct connected with the dispute, unless he is permitted to do so by the authority concerned. However, the employer may, in accordance with the standing orders applicable to a workman concerned in the dispute, (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to the workmen immediately before the commencement of the proceeding, or (b) discharge or punish the workman for any misconduct not connected with the dispute. Before the employer discharges or dismisses the workman, he must pay to the workman wages for one month and obtain the approval of the authority before whom the proceeding is pending. Where an employer makes an application to a conciliation or

adjudication authority for the approval of action taken by him, the authority concerned must hear the application and pass an order without delay. [Sec. 33].

### **Change of Conditions of Service of Protected Workmen**

A protected workman in relation to an establishment means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognised as such in accordance with the rules made in this behalf. In every establishment the number of protected workmen is to be one per cent of the total number of workmen employed there, subject to a minimum of five and maximum of one hundred. The appropriate government may make rules providing for the distribution of protected workmen among various trade unions connected with the establishment and the manner in which they may be chosen and protected.

In case a dispute is pending before a conciliation or adjudication authority, no employer is allowed to take any action against any protected workman concerned in the dispute (a) by altering to his prejudice, the conditions of service applicable to him immediately before the commencement of the proceeding, or (b) by discharging or punishing him, except with the express and written permission of the authority before whom the proceeding is pending. [Sec. 33].

### **Special Provision for Adjudication of a Dispute Relating to Change of Conditions of Service**

In case an employer contravenes the provisions pertaining to change of conditions of service during the pendency of proceedings before an adjudication authority, the aggrieved employee may make a written complaint before the authority concerned. On receipt of the complaint, the authority is required to adjudicate the complaint as if it were a dispute referred to or pending before it and submit its award accordingly. [Sec. 33 A]. The appropriate government is empowered to transfer a proceeding concerning change of conditions of service pending before one

adjudication authority to another. [Sec. 33 B].

### Notice of Change

An employer proposing to effect any change in the conditions of service applicable to a workman in respect of the following matters (Fourth Schedule of the Act) is prohibited to do so without giving a notice of the proposed change to the workmen affected by it and within 21 days of giving the notice:

- (1) wages, including the period and mode of payment;
- (2) contribution paid, or payable, by the employer to any provident fund, pension fund or for the benefit of the workmen under any law for the time being in force;
- (3) compensatory and other allowances;
- (4) hours of work and rest intervals;
- (5) leave with wages and holidays;
- (6) starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
- (7) classification by grades;
- (8) withdrawal of any customary concession or privilege or change in usage;
- (9) introduction of new rules of discipline, or alteration of existing rules, except insofar as they are provided in standing orders;
- (10) rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen; and
- (11) any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control.

A notice of change is, however, not required: (a) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or (b) where the workmen likely to be affected by the change are the persons to whom the Fundamental and Supplementary Rules, Civil Services

(Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations as notified by the appropriate government, apply. [Sec. 9 A].

Where the appropriate government is of the opinion that application of these provisions pertaining to notice of change may cause serious repercussion on the industry concerned and that public interest so requires, it may issue exempting directions. [Sec. 9 D, B].

### **Protection of Persons**

A person refusing to participate in an illegal strike or lock-out is not to be subjected to expulsion from any trade union or society or to any fine or penalty, or to deprivation of any right or benefit to which he is entitled, or be liable to be placed under any disability or disadvantage as compared with other members of the union or society. [Sec. 33].

### **Representation of Parties**

A workman who is a party to a dispute is entitled to be represented in any proceeding under the Act by (a) a member of the executive or other office-bearer of a registered trade union of which he is a member, or (b) a member of the executive or other office bearer of a federation of trade unions to which his trade union is affiliated, or (c) where the worker is not a member of any trade union, by a member of the executive or other office-bearer of any trade union in the industry in which he is employed or any other workman in the industry. Similarly, an employer may be represented by (a) an officer of an association of employers of which he is a member, or (b) an officer of a federation of associations of employers to which his association is affiliated, or (c) where an employer is not a member of any association, by any association of employers connected with the industry or by any other employer in the industry. No party to a dispute is authorised to be represented

by a legal practitioner in conciliation proceedings or proceedings before a Court of Inquiry. A party to a dispute before an adjudication authority may be represented by a legal practitioner with the consent of the other parties or with the leave of the authority concerned. [Sec. 36].

### **Cognizance of Offences**

No court is empowered to take cognizance of any offence punishable under the Act or of the abetment of such an offence except on a complaint made by or under the authority of the appropriate government. An offence punishable under the Act is not to be tried by a court inferior to that of a Presidency Magistrate or a Magistrate of the first class. [Sec. 34].

### **Power to Make Rules**

The appropriate government is empowered to make rules for the purpose of giving effect to the provisions of the Act. The rules made under the Act are to be laid before State Legislature (in case the appropriate government is the State Government), or before both Houses of Parliament (in case the appropriate government is the Central Government) for confirmation. [Sec. 38].

## **STATE LAWS**

In addition to the Industrial Disputes Act, 1947, many of the States have passed their own laws to regulate industrial relations in their respective jurisdictions. In such States, both the Central and State legislations are in operation. The important State legislations dealing with industrial relations and industrial disputes are : (1) the Bombay Industrial Relations Act, 1946, (2) the U.P. Industrial Disputes Act, 1947 and (3) the M.P. Industrial Relations Act, 1960.

### **The Bombay Industrial Relations Act, 1946**

The main objective of the Act is to regulate industrial relations and to secure a speedier settlement of industrial disputes. The

Act seeks to achieve this objective through the provision of Joint Committees, Labour Officers, Conciliators, Labour Courts, Wage Boards and Industrial Court.

The Act requires the employers to constitute Joint Committees in industrial establishments to serve as a direct and continuous link between employers and employees. Labour Officers appointed under the Act are required to promote harmonious relations between employers and employees, to report to the government the existence of industrial disputes and to appear in any proceedings under the Act. Conciliators are required to make an endeavour for a speedy and expeditious settlement of industrial disputes. An agreement reached in the course of conciliation proceedings is binding on the parties. In case the parties fail to reach an agreement, the Conciliator is required to send a complete report to the Chief Conciliator. If, at any stage, the parties agree to submit the dispute to arbitration, the Conciliator is required to refer it accordingly.

Labour Courts, Wage Boards and the Industrial Court are adjudication authorities. Labour Courts are to deal with disputes relating to standing orders, changes in respect of certain specified matters (Schedule III of the Act) and to arbitrate upon disputes referred to by the government. Wage Boards function under the general supervision of the Industrial Court. The Industrial Court is the appellate authority. The Act authorises giving retrospective effect to a registered agreement, settlement, award, etc. and making them binding on all employees in the industry in the local area.

The Act further provides for the classification of trade unions as "representative unions", "qualified unions", "primary unions" and "approved unions."<sup>1</sup> "Approved union" are authorised to refer any dispute to an Industrial Court for arbitration. They are entitled to appear before Labour Courts and the Industrial Court for specified purposes. A "representative union" is the sole bargaining agency in all proceedings in which it is entitled to appear. An agreement reached with such a union is effective and is ordinarily to be made binding by an award in terms of

1. See also Chapter 9, p. 210.

the agreement. The Act was also adopted by Gujarat after its separation from Maharashtra.

### **The U.P. Industrial Disputes Act, 1947**

The Act seeks to provide for the prevention of strikes and lock-outs and for the settlement of industrial disputes and other related matters.

The Act empowers the State Government to issue orders in respect of the following matters:

- (1) prohibiting strikes or lock-outs generally in connection with any industrial disputes;
- (2) requiring employers and workers to observe such terms and conditions of employment as may be specified in the order;
- (3) appointing industrial courts;
- (4) referring any industrial dispute for conciliation or adjudication;
- (5) regulating or controlling the working of any public utility service; and
- (6) settling any other incidental or supplementary matters.

The Act provides for the adjudication of an industrial dispute affecting more than one industrial establishment by a Tribunal consisting of at least three persons (instead of only one as in the Industrial Disputes Act, 1947), one of whom is to be designated by the State Government as the Chairman. The Act empowers the State Government to refer an award of a Labour Court or Tribunal for its reconsideration before publication. No office-bearer of a trade union is entitled to represent any party unless a period of two years has elapsed since its registration under the Trade Unions Act, 1926 and it has been registered for one trade only. The Act further provides that, in order to be binding, a settlement arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings should be registered under the Act.

### **The M.P. Industrial Relations Act, 1960**

The Act is intended to regulate the relations between employers

and employees and to make provisions for the settlement of industrial disputes and other connected matters.

The Act thus provides for the constitution of Joint Committees and appointment to Labour Officers, Labour Courts, Industrial Court or Board of Arbitration and Courts of Inquiry generally on the lines of the Bombay Industrial Relations Act. It also deals with recognition of trade unions and employers' associations, strikes and lock-outs and protection given to employees in certain cases.

#### THE INDUSTRIAL DISPUTES (AMENDMENT) ACT, 1976

The provisions of the Industrial Disputes Act, 1947 in respect of lay-off, retrenchment and closure of industrial establishments employing 300 or more workmen have been amended by the Industrial Disputes (Amendment) Act, 1976. According to the amending Act, the employers have been put under an obligation to obtain previous permission of the government or a specified authority before laying-off or retrenching workmen or closing down an undertaking. In case of lay-off, no prior authorisation is necessary where the lay-off is due to shortage of power or natural calamity. The amending Act entitles the workmen to three months' written notice or wages for the period in lieu of the notice. No notice to the workmen is necessary where the retrenchment is under an agreement. Where the permission for closure has been granted, the workmen are entitled to notice and compensation applicable in the case of retrenchment.

## CHAPTER 21

### **SOCIAL SECURITY LEGISLATION IN INDIA (1) (EVOLUTION AND WORKMEN'S COMPENSATION LEGISLATION)**

#### **A. EVOLUTION**

The evolution of social security legislation in India has been rather slow, sporadic, and on a more or less selective basis. Although the need for protecting workmen against even the common hazards of life such as injury, sickness, maternity, and old age was realised soon after the advent of industrialisation in the country, no concrete measures were adopted for a long time. Only in the case of fatal injuries, some relief was available to the dependants of the deceased workmen under the Fatal Accidents Act, 1855; but the measure was not of much avail owing to the ignorance and illiteracy of the workmen and their dependants, and a complicated legal procedure involved in establishing a claim.

After the outbreak of the First World War, the pace of industrialisation was accelerated and a large number of wage-earners came to be employed in various industrial undertakings. The increasing hazards of industrial life led to further dissatisfaction among the working class which wanted protection against at least certain contingencies such as injuries and death. By that time, the workmen had realised the utility of forming trade unions and resorting to concerted action for the furtherance of their legitimate interests. Besides, the I.L.O., which came into existence in 1919, also emphasised the need of protecting workers against hazards of

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industrial life. It was under these conditions that the question of providing security to the workers against the more obvious of the contingencies of life received the attention of the State. A beginning in this direction was ultimately made in 1923 by the passing of the Workmen's Compensation Act which made the employer liable to pay compensation in respect of industrial injuries and death. The Act was a central measure and patterned after the British Workmen's Compensation Act, 1897.

The next contingency engaging the attention of the State was maternity. The lead in this direction was taken by Bombay which adopted a Maternity Benefit Act in 1929. The Act provided for cash benefit during a specified period of maternity. A few other States followed suit and, by and by, Maternity Benefit Acts came into existence in almost all the States. Unlike Workmen's Compensation Act, Maternity Benefit laws have mostly been State measures. However, the Government of India also adopted an Act in 1941 which applied to miners. Later, the Plantation Labour Act, 1951, a central legislation, also provided for maternity benefit to plantation workers. In 1961, the Government of India passed the Central Maternity Benefit Act which provided for a uniform benefit all over the country. Many States have already adopted the Central Act.

These measures pertaining to workmen's compensation and maternity protection covered only a part of the various contingencies of life and that too, on the principle of employer's liability rather than that of social insurance. However, the questions of providing protection against other risks and application of the principle of social insurance received attention of various committees appointed by the Government of India and the State Governments from time to time.

### **The Royal Commission on Labour**

The Royal Commission on Labour appointed in 1929 emphasised the need for protecting workers during sickness and recommended a scheme of health insurance for them. Realising the difficulties in the formulation of the scheme, the Commission, however, recommended the operation of the scheme on an experimental basis in the first instance, to be replaced by a country-wide scheme

later on. The Government of India examined the recommendations and requested the Actuary's Department, London to give advice. On receipt of the advice, the Government of India sought the views of the Provincial Governments regarding the conduct of preliminary enquiries. However, the response of the Provincial Governments was not encouraging in view of the financial burden involved and extent of efforts required in the collection of relevant statistics. In consequence, the question was dropped for the time being.

The Commission also examined the questions of unemployment insurance and old-age pension, but did not favour the adoption of the schemes owing to unfavourable conditions obtaining in the country.

### **The Bombay Textile Labour Enquiry Committee, 1937**

The Bombay Labour Enquiry Committee set up in 1937 recommended the adoption of a compulsory and contributory sickness insurance scheme. The scheme provided for both cash and medical benefits and was to be financed by contributions from the workers, employers and government. It was to be implemented in the first instance in Bombay and Ahmedabad and subsequently to be extended to other cotton textile centres. However, no concrete efforts were made to implement the scheme. Earlier, the Bombay Strike Committee appointed in 1928 had also advocated a voluntary gratuity payment scheme for workers during periods of unemployment.

### **The Cawnpore Labour Enquiry Committee, 1937**

The Cawnpore Labour Enquiry Committee appointed in 1937 also dealt with the question of health insurance. In this regard, the Committee endorsed the earlier recommendations of the Royal Commission on Labour and suggested an appropriate subsidy from the State for financing it. The Committee also recommended the establishment of a gratuity scheme for making payments during periods of unemployment and a contributory provident fund as a provision against old age.

### **The Bihar Labour Enquiry Committee, 1938**

The Bihar Labour Enquiry Committee appointed in 1938 recommended the adoption of a sickness insurance scheme based on a contributory basis.

### **The First Labour Ministers' Conference, 1940**

The question of health insurance came up for discussions before the first Labour Ministers' Conference held in 1940. The Conference realised the necessity for a sickness benefit fund and suggested that before taking further action, the Government of India should ascertain the willingness of employers and workers to contribute to the fund.

### **The Second Labour Ministers' Conference, 1941**

At the time the Second Labour Ministers' Conference was held, the adoption of a sickness insurance scheme had received a wide acceptance. Both the employers and workmen had expressed their willingness to pay contributions. The Provincial Governments, which were hitherto hesitant, also supported its introduction. In view of the encouraging responses, the Central Government did not favour any further postponement of the scheme. Thus, the Government of India decided to start preliminary actuarial examination for the purpose, but it was subsequently realised that in absence of sufficient statistical data, the actuarial examination was not possible. However, it was ultimately decided that instead of dropping the matter, an actual scheme for selected industries be framed and implemented even in the absence of adequate statistical data.

### **The Third Labour Ministers' Conference, 1942**

On the basis of the earlier decision, the Government of India prepared a tentative scheme of sickness insurance for factory workers and placed the same before the Third Labour Ministers' Conference for consideration. The proposed scheme, which was very limited in scope applicable only to cotton textile, jute textile and heavy engineering industries in the first instance, was to be imple-

mented on an experimental basis.

The Conference discussed the scheme and suggested that even when the government was not required to subsidise the scheme, it should advance loans whenever needed. Besides, it also recommended the establishment of a committee of experts to work out the details of the scheme. However, it was subsequently considered expedient to entrust the work to only one expert to be assisted by a panel of advisors.

### **Prof. Adarkar's Report**

In accordance with the recommendations of the Conference, the Government of India appointed Prof. B. P. Adarkar as a Special Officer in 1943 to work out a scheme of health insurance for industrial workers. Shortly thereafter, the Health Survey and Development Committee under the chairmanship of Joseph Bhore was appointed by the Government of India to make a broad survey of the existing position in regard to health conditions and health organisation in India and to give recommendations for future development. The Committee was assisted by an Industrial Health Sub-committee which considered the question of providing overall medical care to industrial workers. In finalising the scheme, Prof. Adarkar had the benefit of consulting the Sub-committee on industrial health, and also several organisations of employers and workmen. A panel of actuaries was also created to assist Prof. Adarkar in matters concerning financial structure of the proposed scheme.

Prof. Adarkar submitted his report in August, 1944. The scheme framed by him was to cover three major groups of industries namely, textiles, engineering, and mineral and metals. All perennial factories in these industries, other than a few specifically exempted, were to be covered. The upper wage limit was to be Rs. 200 per month, and the upper age limit, 60 years. Prof. Adarkar suggested classification of workers into three groups, i.e. "permanent", "temporary" and "casual", depending on the length of service. The permanent and temporary workers were required to pay contributions and were entitled to cash and medical benefits. The casual workers were not required to pay contributions, but were entitled only to medical relief. The employer was required to

pay contributions at a uniform rate in respect of all the three categories of workers. The medical service organisation was to be fully controlled by the insurance institution and not by an outside authority or the State Government.

Besides, Prof. Adarkar also emphasised a uniform scheme of maternity insurance in place of scattered Maternity Benefit Acts, and a scheme of insurance against industrial disability in place of Workmen's Compensation Act. At the same time, he strongly suggested merging of Maternity Benefit laws and Workmen's Compensation Act with the health insurance scheme and framing a unified and integrated scheme of health, maternity, and employment injury insurance. Prof. Adarkar also framed schemes of maternity insurance for miners and social insurance for seamen.

Prof. Adarkar's report led to serious efforts towards formulation of social security schemes in the country. Shortly after the submission of the report, the subject came up for discussions before the Indian Labour Conference which recommended a thorough investigation into the questions of wages, employment, housing, and social conditions, and thereafter, the appointment of a committee to formulate a complete social security plan for the country on the basis of informations obtained.

In pursuance of the recommendations of the Indian Labour Conference, the Government of India appointed in 1944 the Labour Investigation Committee headed by D.V. Rege. Unfortunately, the Committee which submitted its report in 1946, dealt with the question of social security only casually, though the term of reference had laid considerable emphasis on the matter. As such, the report of the Rege Committee was not of much avail in the formulation of the social security schemes.

### Further Developments

Subsequently, the Government of India thought it desirable to obtain an expert opinion before giving effect to Prof. Adarkar's recommendations. Accordingly, the International Labour Office was requested to depute some experts to assist in the formulation of the scheme. In response to the request thus made, services of two I.L.O. experts namely, M. Stack and R. Rao were made available to the Government of India. These experts went into the

question in some detail and suggested some modifications in Prof. Adarkar's plan. The main modifications suggested by these experts pertained to: (a) administration of medical and cash benefits, (b) integration of maternity benefit and workmen's compensation in the health insurance scheme, and (c) the classes of factories and workmen to be covered. In general, they agreed with Prof. Adarkar in respect of financial participation of the State and adoption of an integrated scheme covering sickness, maternity and employment injury.

### **The Employees' State Insurance Act, 1948**

On the basis of Prof. Adarkar's recommendations and the suggestions made by Stack and Rao, the Workmen's State Insurance Bill, 1946 was framed and was passed by the Dominion Assembly in April, 1948 as the Employees' State Insurance Act. The Employees' State Insurance Act, 1948, the first of its kind in South-east Asia, marked a beginning of social insurance for industrial workers in India.

### **Provisions for Old Age**

In 1948 itself, a beginning was made for old age protection by the enactment of the Coal Mines Provident Fund and Bonus Schemes Act. The Act established a compulsory provident fund for coal miners and provided for bonus based on attendance. Later, the Employees' Provident Funds Act, 1952 provided for provident fund for the benefit of employees in a few industries and establishments.

### **Provision against Unemployment**

Although, there is no legislation providing for unemployment insurance, certain amendments introduced in the Industrial Disputes Act in 1954 provided for some relief in the event of lay-off and retrenchment.

### **The Existing Social Security Laws**

Thus, at present, social security legislations in the country

comprise: the Workmen's Compensation Act, 1923, the Central and the State Maternity Benefit Acts, the Employees' State Insurance Act, 1948, the Coal Mines Provident Fund and Bonus Schemes Act, 1948, and the Employees' Provident Funds Act, 1952. The specific risks and the laws under which they are covered are given in Table 30.

TABLE 30

## Risks Covered Under Social Security Laws in India

<i>Risk</i>	<i>Laws under which covered</i>
1. Disablement	(1) Workmen's Compensation Act, 1923 (2) Employees' State Insurance Act, 1948
2. Death	(1) Workmen's Compensation Act, 1923 (2) Employees' State Insurance Act, 1948
4. Maternity	(1) State Maternity Benefit Acts (2) Central Maternity Benefit Act, 1961 (3) Employees' State Insurance Act, 1948
4. Sickness	(1) Employees' State Insurance Act, 1948
5. Old age	(1) Coal Mines Provident Fund and Bonus Scheme Act, 1948 (2) Employees' Provident Funds Act, 1952 (3) Assam Tea Plantations Provident Fund Scheme Act, 1955 (4) Seamen's Provident Fund Act, 1966

## Need for a Comprehensive Social Security Scheme

India, as yet, does not have a comprehensive and unified social security scheme covering all its citizens nor even a limited comprehensive scheme covering the industrial workers in respect of the various contingencies of life. Amongst many paradoxes facing the country, here is another paradox. The poorer the country, the greater is the need of its citizens for social security measures but less is its capacity to finance the same. The widespread poverty of the masses including the industrial workers makes them still more vulnerable to the interruptions in

the flow of income caused by various contingencies and hazards of life. People living at the margin of subsistence become destitute and are least able to cope with the situations interrupting their meagre income. Individually, they have no savings to face the contingencies of life; it is only collective efforts that can save them from sinking deeper and deeper into the morass of economic destitution. But the poverty that makes collective assistance an urgent necessity also hinders emergence of collective efforts because the State does not have the necessary resources to finance the same. The country may have to wait for quite sometime before the economic development and the consequent increase in the national income can enable it to launch and implement a comprehensive social security scheme. However, the various contingencies of life causing frequent interruption in, or a complete stoppage of, the flow of income are an important cause of poverty in the country. A minimum-needs programme has to be evolved and has to take care of such contingencies, otherwise, any attempt to fight poverty will remain incomplete.

### WORKMEN'S COMPENSATION LEGISLATION

#### (1) In Great Britain

With the advent of industrial revolution and harnessing of the massive powers of steam and electricity, the dangers in workplaces increased manifold. Accidents increased by leaps and bounds causing physical injuries and death on a large scale. Similarly, occupational and industrial diseases caused by the processes of production and the handling of particular types of materials also became common resulting in physical and mental incapacitation, sickness and death. Though the Common Law, of course, required the employers to provide safe workplace, safe plant and appliances, safe system of work, and to instruct young persons as to the dangers likely to arise from their work, in practice, there was little improvement in the workplaces which continued to be unsafe and hazardous. The safety movement itself was in its infancy. Many of the methods and technology of making the work-place safe and workmen safety-minded were unknown. Even if known in some cases, making work-place safe and providing safety appliances cost money, which the employers tried to avoid most of the time. Conse-

quently, the work-places, in many cases, became virtual death traps.

The economic loss resulting from accidents caused widespread suffering among the working class families. Accidents became one of the permanent causes of poverty, starvation and deprivation. With the wages low as they were the workmen were not in a position to save any significant amount for such rainy days. Any attempt by the workers to obtain compensation for such losses from the employers was, most of the time, defeated by the employers' reluctance and callous disregard for human suffering. The provisions under the Common Law for damages for such losses were completely unsatisfactory and were not of much avail to the workers.

Under the Common Law an injured workman or his dependants in case of his death could sue the employer in a civil court and claim damages from him. But in order that the courts could grant such damages, the claimant had to prove: (a) that the employer had failed in his duty to provide a safe work-place, safe plant and appliances, and a safe system of work, and (b) that the employer's negligence and failure to fulfil the duties had caused the accident resulting in personal injury or death. Only when courts were satisfied on this score, damages could be awarded. The onus of proof was on the claimant. No workman could hope to secure damages, unless he indulged in a long, costly process of litigation in which the odds heavily weighed against him all the time. With far superior financial resources and legal advice, the employers could easily defeat such claims.

The common defences available to the employer in such compensation cases under the Common Law were the following:

- ✓ (1) doctrine of assumed risk;
- ✓ (2) doctrine of contributory negligence;
- ✓ (3) doctrine of common employment and fellow servants' responsibility;
- ✓ (4) doctrine that "personal claim comes to an end with the death of either party"; and
- ✓ (5) the doctrine of unknown persons' responsibility.

#### (1) *The doctrine of Assumed Risk*

Under the doctrine of assumed risk, the employer argued that the employee took the risk upon himself (*Volenti non*

*fit injuria*) when he accepted employment, knowing fully well that it could involve him in accidents. However, the employer generally did not adopt this line of defence where the regular work of the employee was obviously dangerous. But where the employee was asked to undertake a dangerous operation outside his ordinary duties and he voluntarily accepted it, the employer had a good defence. The defence was not tenable where the employer was being sued for the breach of a statutory duty.

(2) *The Doctrine of Contributory Negligence*

Under this line of defence, the employer could say that the injury was caused entirely due to the workman's fault. A defence of contributory negligence also arose if, in addition to the employer's negligence, the injured employee was himself negligent and the injury was the result of both the causes. The Law Reform (Contributory Negligence) Act, 1945 empowered the court to apportion the responsibility for the injury or damage and to reduce the amount of damages to such extent as it thought fit and equitable.

(3) *The Doctrine of Common Employment and Fellow Servants' responsibility*

The doctrine of common employment was adopted by the employers in respect of accidents resulting from the negligence of a fellow workman. Under this doctrine, the employer contended that the workman knew at the time of employment that he was exposed to the risk of injury because of the negligence on the part of his fellow-workmen also, and that he was supposed to have contracted on the term that, as between himself and his master, he would run that risk. Thus the employer was not liable to pay damages in respect of injuries arising from the carelessness of fellow workmen. The Employer's Liability Act, 1880 was passed with a view to remedying this grievance.

(4) *The doctrine that "personal claim comes to an end with the death of either party"*

This line of defence pertained to fatal accidents. As the claim of a workman was based on the personal negligence of his employer, the employer argued that "personal claim comes to an end with the

death of either party'' (*Actio personalis moritur cum persona*). The Fatal Accidents Act, 1846 indirectly dealt with this question, but later, the Law Reform (Miscellaneous Provisions) Act, 1934 abolished the maxim.

(5) *The doctrine of Unknown Person's responsibility*

In case of accidents caused by the negligence of an unknown person, the employer contended that he was not liable to pay damages for such accidents, as his liability was confined only in respect of accidents resulting from his personal negligence. The conception of negligence as the only basis for a claim to compensation was ultimately done away with under the Workmen's Compensation Acts.

(2) **In India**

Prior to the enactment of the Workmen's Compensation Act, 1923, the workman suffering a personal injury caused by an accident occurring in the course of his employment could claim damages in a civil court under the Common Law. The workman, or in the case of his death, his dependent heirs, had to file a civil suit claiming damages for the losses suffered. The Court would award damages if the claimant could prove that the accident was due to the negligence of the employer or lack of proper care on his part.

This position came to obtain in India because this was the practice followed in England under the Common Law. With the establishment of the British rule in India, the Common Law became applicable to this country also. It was extremely difficult and expensive and time-consuming, and often well-nigh impossible for industrial workers of India, ignorant and illiterate as they were, to secure favourable judgements from the civil courts in the face of stiff opposition from the side of the employers. All the defences which the employers in England could use to defeat the worker's claim for a compensation were also available to the Indian employers. The workmen had to engage in exhausting litigation which, in the end, proved ruinous to the workers themselves. Damages, if any and ever awarded, were consumed mostly in defraying legal expenses. The result was that the provisions of the Common Law, to all intents and purposes, were practically non-existent from the workers' point of view.

With industrialisation and mechanisation when accidents

became more frequent and injury to life and limbs became common, protests were raised against the callous attitude of the employers and the movement for reforms in the Common Law started in India also. The defences built by the employers were sought to be demolished one by one by the enactment of various statutes in England and the same trend was reflected in the developments in this country also, with the inevitable time lag.

The enactment of the Workmen's Compensation Act, 1923, to a large extent, reversed the position obtaining under the Common Law. Whereas under the Common Law an injured workman could secure damages if he succeeded in proving his employer's negligence, under the new enactment, payment of compensation became more or less automatic, unless the employer could succeed in proving that the injury was the result of the injured's negligence, disregard of factory regulations or of drunkenness. In other words, it was for the workers to prove the employer's negligence and responsibility for the happening of the accident in order to be entitled to compensation under the Common Law; it is for the employers now to prove the worker's negligence and responsibility for an accident in order to escape the liability for the payment of compensation under the workmen's compensation legislation.

The position today is that an injured workman or his heir in case of his death can utilise either the remedies available under the Common Law or those under the Workmen's Compensation Act, but action under the one debars action under the other. The enactment of the Workmen's Compensation Act, 1923 has not extinguished his right to claim damages under the Common Law. The workman concerned can choose his remedy but cannot claim both. The British practice under the Workmen's Compensation Act, 1906 was more favourable to the workman. The workman could elect to exercise his rights either under the Common Law or the Workmen's Compensation Act. In the event he failed to secure damages from the Court under the Common Law, he could still file a claim for compensation under the Workmen's Compensation Act, but the legal expenses incurred by the employer were to be deducted from the total amount of compensation under the Workmen's Compensation Act.

Thus, laws concerning compensation for work-injuries in India have followed a pattern similar to that of Great Britain.

The rights of injured workmen for damages under the English Common Law have also been retained in India. Besides, in line with the practices in Great Britain, special statutes were adopted in India to remedy the grievances of injured workmen or their dependants at the Common Law. The Indian Fatal Accidents Act, 1855, which was patterned after the British Fatal Accidents Act, 1846, was intended to do away with the maxim, "a personal action dies with the person injured" (*Actio personalis moritur cum persona*). The Act enabled certain heirs of the deceased person to sue for damages when death was caused by an actionable wrong.

Similarly, in line with the British Employers' Liability Act, 1880, the Indian Employers' Liability Act, 1938 aimed at abrogating the doctrines of 'common employment' and 'assumed risk'. An Act of the same name passed in 1951 sought to remove certain ambiguities under the Act of 1938.

### Workmen's Compensation Legislation

The principle of workmen's compensation was formally adopted in India in 1923, i.e. about 25 years after the adoption of the principle in Great Britain. The Workmen's Compensation Act, 1923 which is the first social security legislation in India, makes the employer liable to pay compensation for personal injury caused by accident arising out of and in the course of employment. The Act has been amended several times since it came into force (i.e. July 1, 1924).

The provisions of the Workmen's Compensation Act, 1923 as they stand amended up-to-date are given below.

#### THE WORKMEN'S COMPENSATION ACT, 1923 (MAIN PROVISIONS)

##### Scope

In general, the protection of the Act has been given to non-casual workmen employed for employer's trade or business but earning not more than Rs. 1000 per month. Schedule II of the Act specifies in detail the operations, industries or employments covered by the Act. Although the industries or employments mentioned in the Schedule have a very wide coverage (including factories, mines, plantations, agriculture, transport, etc.), there are

certain limitations in respect of the categories of persons covered. Notable operations mentioned in the Schedule include: manufacturing, mining, loading or unloading, fuelling, constructing, repairing, demolishing, excavating, driving, handling, blasting, etc. Persons employed in the clerical capacity have generally been excluded. In addition to the workmen employed in capacities enumerated in Schedule II, the Act also applies to railway servants not employed in offices or in capacities specified in the Schedule, and in case of such persons the maximum wage limit of Rs. 1000 does not apply. The Act does not apply to members of the Armed Forces. The exercise and performance of the powers and duties of a local authority or government are to be deemed to be the trade or business of the authority concerned. The State Government is empowered to add to Schedule II any class of persons employed in any other hazardous occupation, and in doing so, it may direct that the provisions of the Act be applied to such classes of persons in respect of specified injuries only.

### SOME IMPORTANT DEFINITIONS

#### **Partial Disablement**

'Partial disablement' means: (a) where the disablement is of temporary nature, such disablement as reduces the earning capacity of a workman in the employment in which he was engaged at the time of accident resulting in the disablement, and (b) where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time. The Act specifies certain injuries which are deemed to result in permanent partial disablement. The list of such injuries, which has been mentioned in Part II of Schedule I of the Act, is given in Appendix 5.

#### **Total Disablement**

'Total disablement' means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. The Act also specifies

certain injuries which are to be deemed to result in permanent total disablement. These include:

- (a) total loss of sight of both eyes;
- (b) loss of both hands or amputation at higher sites;
- (c) loss of a hand and a foot;
- (d) double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot;
- (e) loss of sight to such an extent as to render the claimant unable to perform any work for which eye-sight is essential;
- (f) very severe facial disfigurement; and
- (g) absolute deafness.

Besides, permanent total disablement is also to be deemed to result from any combination of injuries where the aggregate percentage of the loss of earning capacity (see Appendix 5) amounts to one hundred per cent or more. [Sec. 2 (e)].

### Dependant

“Dependant” means any of the following relatives of a deceased workman:

- (i) a widow, a minor legitimate son, an unmarried legitimate daughter, or a widowed mother;
- (ii) an infirm son or daughter who has attained the age of 18 years and who was wholly dependent on the earning of the workman at the time of his death; and
- (iii) if wholly or partly dependent on the earnings of the workman at the time of his death: (a) a widower, (b) a parent other than a widowed mother, (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and minor or if widowed and a minor, (d) a minor brother or an unmarried sister or widowed sister, if a minor, (e) a widowed daughter-in-law, (f) a minor child of a predeceased son, (g) a minor child of a predeceased daughter where no parent of the child is alive, or (h) a parental grandparent if no parent of the workman is alive.

### Employer's Liability for Compensation

In case a personal injury is caused to a workman by accident arising ‘out of’ and ‘in the course of, employment, his employer

is liable to pay compensation at the prescribed rate. However, the employer is not liable to pay compensation except in the event of the death of the injured workman, if the injury is directly attributable to any of the following factors:

- (1) the workman having been at the time of accident under the influence of drink or drugs; or
- (2) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing safety of workmen; or
- (3) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

It is to be carefully observed that the employer is liable to pay compensation in the event of death caused by the accident even if the accident could be attributed to the negligence on the part of the deceased.

The employer is also not liable to pay compensation in respect of any injury which does not result in total or partial disablement of the workman for a period exceeding three days.

### Arising 'Out of' and 'in the Course of' Employment

The terms arising 'out of' and 'in the course of' employment have proved to be most controversial in determining claims for compensation for work-injuries. A workman is entitled to compensation only when two conditions are satisfied. Firstly, the accident should be arising out of employment and secondly, it must occur during the course of employment. The first refers to a causal connection between accident and employment, and the second refers to the time of occurrence of the accident. It is possible that an accident may arise out of employment but may not occur during the course of employment, or that it may occur in the course of employment but does not arise out of employment. If only one of the conditions is satisfied, the claim for compensation is not maintainable. If the employer can prove this, he escapes the liability to pay compensation. Hence this has been the commonest plea resorted to by the employers in contesting claims for compensation. Therefore, the implications of these two terms need further explanation.

In most cases, the conditions under which an accident takes place leave little room for questioning whether these two conditions are satisfied. It is the marginal cases where the determination becomes difficult.

### **Arising in the Course of Employment**

Taking the second condition first, i.e. 'arising in the course of employment', there are two or three circumstances under which it becomes difficult to prove whether the accident arose out of employment. The circumstances relate mainly to: (a) interruptions in the course of employment e.g. power failure, (b) the gap between the arrival time and scheduled time for the commencement of work, as also between the departure time and the scheduled time for ending work, and (c) time spent in travelling to and from work.

The question arises whether accidents occurring under the three circumstances mentioned above can be said to be arising in the course of employment or not. One thing is clear here: if during these periods the workman concerned is acting under the orders of his employer or his agent and meets with an accident, the accident is said to be arising in the course of employment. But what is the position when there is no such order and the workman is acting on his own?

In general, the periods of temporary interruption of employment during the contracted hours are not included, except in cases where the interruption was reasonably necessary or incidental to the employment. If a workman has broken off his work in order to do something for his own purpose and he sustains an injury caused by accident during this period, the accident does not arise in the course of employment. The intervals for recognised breaks in employment, like rest pauses or meal times, are covered under the course of employment if the workman remains on his employer's premises.

If a workman arrives at his work within a reasonable time for starting work, the interval is in the course of employment, so long as the worker is in that part of the employer's premises which he has to pass through to reach his work. Similarly, if the workman comes to his place of work before the contracted time for starting

work in order to prepare or equip himself for his job, the interval is included in the course of employment. Again, the interval involved in leaving the premises after the contracted time of finishing work is included in the course of employment if the worker leaves by the usual route and does not loiter.

The periods of travelling to and from work are normally not included in the course of employment. Exceptions to this normal rule are the cases where the workman concerned is under an obligation to his employer to use a vehicle, and under certain conditions where the workman uses a vehicle with the express or implied permission of his employer even when he is under no obligation to his employer to travel by that vehicle.

### **Arising Out of Employment**

An accident arises out of employment if it occurs by reason of the nature or conditions or obligations of employment or by reason of anything which is necessarily incidental to the employment. In general, if it is shown that an accident has arisen in the course of employment, it also presumably arises out of employment unless, the evidence is to the contrary. An accident does not arise out of employment in the following cases:

- (1) If the workman does something different from the work actually assigned to him. This is commonly known as performing 'arrogated duties'. However, the accident is said to arise out of employment if the workman does another person's work on the orders of a superior whose orders he is required to obey.
- (2) If the workman is doing something which is not required by or incidental to his normal duties and which is done for his own personal purposes.
- (3) If the workman indulges in rashness as distinct from mere carelessness.
- (4) If the workman meets an accident from a danger which he shares in common with persons not in the same employment e.g. injury by lightning, frost-bite, etc., unless he is exposed to the danger by the nature of employment.
- (5) If the workman is injured as a result of his state of health e.g. an injury sustained by an epileptic during his fit. If, however,

the fit is caused by strain of work, or if the injury results from dangers at the place of work, or is aggravated by the nature of work-place, the accident arises out of employment.

- (6) If the workman receives an injury entirely due to his drunken condition, except in cases of fatal accidents.
- (7) If the workman sustains an injury at a place where his employment does not require his presence.
- (8) If the workman is injured on being assaulted while he is at work.

### Occupational Diseases

The Act specifies a number of occupational diseases the contracting of which is to be regarded as an injury caused by accident arising out of and in the course of employment, thus making the employer liable to pay compensation in respect of these diseases also. There are three classes of occupational diseases which are to be considered injuries by accident under three different sets of prescribed circumstances.

Contracting of an occupational disease in the first group is to be regarded as an injury by accident arising out of and in the course of employment if it is contracted by a workman in any specified employment to which the disease is peculiar. Occupational diseases in this group and employments to which they are peculiar, as mentioned in Schedule III of the Act, are given in Part A of Appendix 6.

Contracting an occupational disease in the second class (mentioned in Part B of Appendix 6) is to be considered an injury by accident arising out of and in the course of employment if a workman, while in service of an employer for a continuous period of six months (not including the period of service under any other employer in the same kind of employment), contracts it in any specified employment likely to generate the disease. Besides, if a workman employed in any employment in this group for the specified continuous period has contracted an occupational disease after the cessation of service, the contracting of the disease is also deemed to be an injury by accident. The list of the occupational diseases in this group and the employments to which they are peculiar is given in Appendix 6.

The Act specifies still another class of occupational diseases given in Part C of Appendix 6. If a workman, while in the service of one or more employers in any specified employment (likely to generate a disease under this class) for such continuous period as prescribed by the Central Government, contracts it, contracting of the disease is an injury by accident arising out of and in the course of employment. Contracting a disease under this group is also to be considered an injury by accident even when his continuous period of employment under one or more employers is less than the specified minimum if it is proved that the disease has arisen out of and in the course of employment. Besides, if it is shown that a workman, who having served one or more employers and employed in this class for the specified continuous period, has contracted the disease after the cessation of service, the contracting of the disease is also an injury by accident provided the disease arose out of employment. In case a workman contracts such an occupational disease which has been deemed to be an injury by accident, and the employment was under more than one employer, all his employers are liable for the payment of compensation in a proportion decided by the Workmen's Compensation Commissioner.

The State Government is empowered to add any occupational disease peculiar to any specified employment in Parts A and B of Schedule III of the Act. The power to add occupational diseases peculiar to employments in Part C of the Schedule vests in the Central Government.

As regards diseases not covered above, no compensation is payable unless the disease is directly attributable to specific injury by accident arising out of and in the course of employment.

### **Amount of Compensation**

As the name of the Act indicates, it seeks to compensate the workmen for the loss of earnings and earning capacity due to an accident. Therefore, the amount of compensation payable under the Act is based on the extent of the loss of earnings of injured workmen. Compensation for death and permanent disablement is to be paid in lump sum, whereas a half monthly payment is to be made in the case of temporary disablement. The workers have been divided into 13 wage-groups for the purpose of the calculation

of compensation. The amount of compensation in respect of death, certain cases of permanent disablement and also temporary disablement for workers in different wage groups is given in Table 31.

In case of an injury resulting in permanent partial disablement specified in Part II of Schedule I (see Appendix 5), the amount of

**TABLE 31**  
**Amount of Compensation in Certain Cases<sup>1</sup> Under Workmen's Compensation Act, 1923**

<i>Monthly wages of the workman injured</i>		<i>Amount of compensation for</i>		<i>Half-monthly payment as compensation for temporary disablement</i>
<i>More than</i>	<i>But not more than</i>	<i>Death</i>	<i>Permanent total disablement</i>	
<i>Rs.</i>	<i>Rs.</i>	<i>Rs.</i>	<i>Rs.</i>	<i>Rs.</i>
0	60	7,200	10,080	Half his monthly wages
60	90	9,720	14,608	36.00
90	120	11,520	16,128	42.00
120	150	13,500	18,900	48.75
150	200	16,800	23,520	60.00
200	300	18,000	25,000	82.50
300	400	19,200	26,880	100.00
400	500	21,000	29,400	118.75
500	600	21,600	30,240	135.00
600	700	23,100	32,340	148.75
700	800	24,000	33,600	160.00
800	900	27,000	37,800	168.75
900	1,000	30,000	42,000	175.00

1. Schedule IV of the Act.

compensation is to constitute the same percentage of the compensation payable in the event of total permanent disablement, as is the percentage loss of earning capacity caused by the injury. If a workman sustains an injury not specified in the Schedule, the amount of compensation is to constitute such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury. In case the same accident results in more than one injury, the amount of compensation in respect of each of the injuries is to be aggregated, but the total is not to exceed the amount which would have been payable in the case of permanent total disablement (i.e. the total amount is not to be more than what is payable for 100% loss of earning capacity).

### **Temporary Disablement**

In the event of temporary disablement, whether total or partial, compensation is to be paid half-monthly. The rates for injured workmen in different wage-groups have been shown in Table 31.

Where temporary disablement lasts for a period of 28 days or more, the half-monthly payment is to begin from the sixteenth day from the date of disablement. In case a disablement lasts for less than 28 days, payment is to begin from the sixteenth day after the expiry of the waiting period of three days from the date of disablement. Half-monthly payment is to continue during the period of disablement or for a period of five years, whichever is shorter. Where the disablement ceases before the date on which any half-monthly payment falls due, a sum proportionate to the duration of disablement during the period is to be paid. If an injured workman earns something during the period of temporary disablement, the amount of half-monthly payment is not to exceed the difference between half of his monthly wages earned by him prior to and after the accident.

In every case of disablement, where an injured workman has already received any amount from his employer by way of compensation, the same is to be deducted from the amount of compensation (whether lump sum or half-monthly payment) to which he is entitled under the Act. However, the amount received by

the workman for medical treatment in respect of an injury is not to be treated as compensation received by him.

### **Review of Half-Monthly Payment**

The Commissioner may review a half-monthly payment on the application of either the employer or the workman if the application is accompanied by a certificate of a qualified medical practitioner to the effect that there has been a change in the condition of the workman. A medical certificate is not needed if the application has been made in accordance with rules framed under the Act. On the basis of the review, the half-monthly payment may be continued, increased, decreased or ended, depending on the nature of the case. In case the accident has resulted in permanent disablement, the half-monthly payment may be converted into lump sum and the amount paid to the workman after making necessary deductions in respect of the amount already received by him.

A half-monthly payment may be redeemed by the payment of lump sum agreed to by the parties. The Commissioner may also determine the lump sum in lieu of the half-monthly payment, if an application has been made by either party and payments have continued for not less than six months.

### **Compensation to be Paid in Time**

The employer is required to pay compensation as soon as it falls due. However, in case the employer does not accept the liability for compensation to the extent claimed, he may make provisional payment based on the extent of liability accepted by him. The amount of compensation in such a case is to be either deposited with the Workmen's Compensation Commissioner or paid to the workman concerned. Where the employer is found in default of paying compensation within one month from the date it fell due, the Commissioner may direct the payment of interest at the rate of 6% per annum in addition to the amount of arrears. If the Commissioner does not find any justification for the delay, he may also direct the payment of penalty not exceeding 50% of the amount payable. [Sec. 4 A].

### **Distribution of Compensation in Certain Cases**

Payment of compensation in respect of a workman sustaining fatal injury or a lump sum as compensation to a woman or a person under legal disability is to be made by deposit with the Commissioner. In such cases, payment made directly by the employer is not to be considered as payment of compensation.

However, an employer may make advances to a dependant of the deceased workman on account of compensation, but the aggregate of the advances made is not to exceed Rs. 100. The amount thus advanced is to be deducted by the Commissioner from the amount of compensation payable to the dependant and repaid to the employer. Any other sum amounting to not less than Rs. 10 payable as compensation may be deposited with the Commissioner for payment to the person entitled to the compensation. The cost of funeral expenses of the deceased workman not exceeding Rs. 50 may also be deducted from the sum deposited with the Commissioner and paid to the person by whom the expenses were incurred.

The amount of compensation deposited with the Commissioner is to be paid to the person (not a woman or a person under legal disability) who is entitled to it. Where any lump sum deposited with the Commissioner is payable to a woman or a person under legal disability, the sum may be "invested, applied, or otherwise dealt with", for the benefit of the person in accordance with the directions of the Commissioner. In case of a half-monthly payment to a person under legal disability, the Commissioner may order its payment during the period of disability to any dependant or other person considered by him to be best fitted to provide for the welfare of the workman.

In case of a deceased workman, the amount of compensation (payable after necessary deductions) is to be apportioned among the dependants in a proportion decided by the Commissioner or paid at his discretion to any one dependant. If there is no dependant, the amount is to be repaid to the employer by whom it was paid.

The Commissioner may vary his former order concerning the distribution of any sum or manner of investing and applying it in certain cases i.e. neglect of children on the part of a parent, *varia*.

tion in the circumstances of a dependant, or other sufficient cause. In such a case, the person whose interest is likely to be prejudicially affected is to be given an opportunity of explaining his case. If it is discovered that the payment of compensation has been obtained by fraud, impersonation or other improper means, the amount so paid may be recovered from the person concerned.

### Medical Examination

A workman who has given a notice of accident to his employer is required to submit himself for examination by a qualified medical practitioner appointed by the employer within three days of the notice. The medical examination is to be free of charge. Similarly, a workman in receipt of half-monthly payment may be required to submit himself for medical examination from time to time. His right to compensation may be suspended if he refuses to be medically examined without sufficient cause. If a workman voluntarily leaves the vicinity of his work-place before the expiry of three days from the date of notice, his right to compensation may also be suspended until he returns and offers himself for the examination. No compensation is payable in respect of the period of suspension. In the event of the death of a workman, whose right to compensation has been suspended, the Commissioner may direct the payment of compensation to his dependants.

In case the injury of a workman has been aggravated subsequent upon his refusal to be examined medically or his failure to comply with the instructions of the medical practitioner, he is not entitled to compensation more than what has been previously determined.

### Claims before a Commissioner

A workman relinquishes his right to compensation under this Act in respect of an injury if he has instituted a suit for damages against the employer or any other person in a civil court. On the other hand, a suit for damages is not maintainable by a workman in any court of law in respect of any injury: (a) if he has instituted a claim to compensation before a Commissioner, or (b) if an agreement has been arrived at between the workman and his em-

ployer providing for the payment of compensation in respect of the injury in accordance with the provisions of the Act.

A claim for compensation before a Commissioner is maintainable only when a notice of accident has been given to the employer as soon as it has occurred, and the claim is preferred within two years of the occurrence of the accident, or in the case of death, within two years from the date of death. The Act specifies the particulars to be furnished in the notice. The State Government may require the employers to maintain a notice-book in the prescribed form which is to be readily available to workmen.

Where an accident results from contracting of an occupational disease, it is deemed to have occurred on the first day after the period during which the workman was continuously absent from work in consequence of the disablement. In case of a partial disablement resulting from contracting of an occupational disease not forcing the workman to absent from work, the period of two years is to be counted from the day the workman gave a notice of disablement. If a workman has contracted an occupational disease after the cessation of service, the period of two years is to be counted from the date on which symptoms of the disease were first detected.

A notice of accident is not necessary: (a) in case of a fatal injury sustained by the workman on the employer's premises or any other place under the employer's control, or (b) if the employer or any other person responsible to him had knowledge of the accident at the time it occurred.

Even where no notice has been given or the claim not preferred in time, the Commissioner may entertain and decide any claim to compensation if he is satisfied that the failure to do so was due to sufficient cause.

### **OTHER PROVISIONS**

#### **Contracting and Remedies of Employer against Stranger**

The principal employer is liable to pay compensation in case of an injury sustained by a workman employed under his contractor. However, the principal employer is entitled to be indemnified by the contractor or any other person from whom the work-

man could have recovered compensation. All questions as to the right and amount of such indemnity are to be, in default of the agreement, settled by the Commissioner.

Where a workman has recovered compensation in respect of any injury creating a legal liability of some person other than one who paid the compensation, the person paying the compensation or a person called to pay indemnity is entitled to be indemnified by the person liable to pay damages.

### **Insolvency of Employer**

Where an employer has entered into a contract with an insurer in respect of a liability under the Act to a workman, then, in the event of the insolvency of the employer or winding up of his company, the right of the employer against the insurer with respect to the liability is to be transferred to and vest in the workman. In such a case, the insurer has the same rights, remedies and liabilities as those of the employer. If the insurer's liability is less than the liability of the employer to the workman, the workman may prove for balance in the insolvency proceedings or liquidation. The amount is to be paid to the workman even in case where the contract between the employer and the insurer is void or voidable on account of the employer's non-compliance with any terms and conditions of the contract, but the insurer has a right to prove the same in the insolvency proceedings or liquidation. The failure of the workman to give notice to the insurer deprives him of the claim. Payment of compensation under the Act is to be given priority in the distribution of the property of an insolvent employer or the assets of the company being wound up.

### **Compensation in the Event of Transfer of Assets**

Where an employer transfers his assets before paying compensation to which he was liable before the transfer, the amount is to be the first charge on the part of the assets so transferred as consist of immovable property.

### **Contracting Out**

Any contract or agreement, whether made before or after the commencement of the Act, whereby a workman relinquishes any

right of compensation from the employer for personal injury arising out of and in the course of employment, is null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under the Act. [Sec. 17].

### **Commissioner for Workmen's Compensation**

The State Government is empowered to appoint a Commissioner for Workmen's Compensation for a specified area. Accordingly, the State Governments have appointed Workmen's Compensation Commissioners; in many cases, the Commissioner of Labour also combines the functions of W.C. Commissioner, while in others, separate W.C. Commissioners have been appointed. A Commissioner thus appointed is empowered to decide any question pertaining to the liability of a person to pay compensation, and the amount, duration and distribution of compensation. A civil court does not have the jurisdiction over a question which the Act requires to be settled, decided or dealt with by a Commissioner or the enforcement of any liability under the Act.

An application for settlement of any matter by a Commissioner excepting an application by dependants for compensation is to be made only when some question has arisen between the parties which they have been unable to resolve by agreement. The form and particulars of the application and the amount of fee to be sent may be prescribed. All costs incidental to any proceeding before him are in his discretion subject to the rules, if any.

In case of a fatal injury, the Commissioner may require the employer to deposit a further sum if the amount deposited by him is insufficient.

The Commissioner may submit any question of law for decision of the High Court. He is empowered to exercise the powers of a civil court for certain purposes. He is also a public servant within the meaning of section 5 of the Revenue Recovery Act, 1890, and is empowered to recover any amount of compensation as an arrear of land revenue.

### **Appearance of Parties**

The Act authorises the appearance of a party before the

Commissioner by a legal practitioner, an official of an Insurance Company or a registered trade union, an Inspector appointed under the Factories Act, 1948 or Mines Act, 1952, or by an officer specified by the State Government. In each case, a written authorisation of the party is necessary. The Commissioner may also permit any other person to appear on behalf of a party.

### **Registration of Fatal Accidents**

In case an agreement has been arrived at between the parties with respect to the amount of lump sum or a compensation payable to a woman or a person under legal disability, the employer may send a memorandum of agreement to the Commissioner for registration. If the Commissioner is satisfied as to its genuineness, he is required to register the same. He may refuse to record the agreement if he is of the view that it has been obtained by fraud or undue influence or other improper means.

In case the registration of an agreement has been refused, the employer is required to pay compensation in accordance with the provisions of the Act.

A registered agreement is enforceable under the Act.

### **Reports and Statements regarding Fatal Accidents**

A Commissioner may require an employer to submit statement in a prescribed form, giving the circumstances attending the death of a workman as a result of an injury and indicating whether in his opinion he is liable to deposit compensation. If the employer accepts his liability, he is required to deposit compensation within thirty days of the service of the notice. If he does not accept the liability, he is required to indicate the grounds on which he disclaims the liability; and the Commissioner may inform the dependants that it is open to them to prefer a claim for compensation.

When a legal obligation is placed on the employers, they are required to report cases of fatal accidents or serious bodily injuries and to give notice of the same to the Commissioner. The notice may also be sent to another authority if the State Government so prescribes. Reporting of fatal accidents is not necessary in

case of factories to which the Employees' State Insurance Act, 1948 applies.

### **Appeals**

Except in certain cases, an appeal against an order of the Commissioner lies with the High Court.

### **Power to make Rules**

The State Government is empowered to make rules for carrying out the purposes of the Act. The Act specifies the matters on which rules may be framed. The Central Government may make rules for giving effect to arrangements with countries for the transfer of money paid as compensation.

### **Right to Compensation where Employees' State Insurance Act is in force**

Where the Employees' State Insurance Act, 1948 is in force, the injured workmen or their dependants do not have the right to compensation under the Workmen's Compensation Act. The Employees' State Insurance Act, 1948 provides benefits in the event both of disablement and death resulting from injury.<sup>1</sup>

1. For details, see pp. 602-613.

## **CHAPTER 22**

### **SOCIAL SECURITY LEGISLATION IN INDIA (2) (MATERNITY BENEFIT LEGISLATION)**

Maternity disables a woman worker from undertaking any work during the few weeks immediately preceding and following child-birth. In order to protect the health of the mother and the child, it is necessary that she be freed from being engaged in work during this period. With the emergence of the system of wage-labour in industrial undertakings, many employers tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment; many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to the health of both the mother and the child.

Maternity benefit legislation was undertaken in order to enable the women workers to carry on the social function of child-bearing without undue strain on their health, and loss of wages. Therefore, maternity benefit legislations, in general, aim at providing payment of cash maternity benefit for a certain period before and after confinement, grant of leave, and certain other related facilities.

Originally initiated by the States, Maternity Benefit Laws subsequently became both the Central and State measures. The first Maternity Benefit Act was adopted in Bombay in 1929.

Subsequently, other States passed similar Acts e.g. Madras in 1934, U.P. in 1938, Punjab in 1943, Assam in 1944, Bihar in 1947, Orissa in 1953, Rajasthan in 1953, Kerala in 1957, M.P. in 1958, and Mysore in 1959. The application of the Acts has been reviewed from time to time and necessary modifications introduced.

The first central measure in the sphere was the Mines Maternity Benefit Act, 1941. Later, the Employees' State Insurance Act, 1948 and the Plantation Labour Act, 1951 also provided for payment of maternity benefit. In 1961, the Central Maternity Benefit Act was passed aiming at a uniform maternity benefit all over the country. Most of the States have opted in favour of central legislation and the remaining few are in the process of adopting it.

#### THE STATE MATERNITY BENEFIT ACTS

The State Maternity Benefit Acts varied in scope, qualifying conditions, the periods and rates of benefit. In general, the Acts applied to factories with certain exceptions. Thus, in A.P., Assam, Kerala, Maharashtra, M.P., Orissa, Punjab, and Rajasthan, the Acts covered women employees in all regulated factories, but the Bihar Act exempted cotton, jute pressing, cane and sugar. In most cases, seasonal factories had been excluded from the purview of the Acts. The Acts of Assam and Kerala covered women workers in plantations also. The West Bengal Act had also been extended to tea factories and plantations in the State. Almost all the States have now adopted the Central Maternity Benefit Act, 1961 after repealing their own Acts.

#### THE CENTRAL ACTS

As said earlier, the first central measure providing for maternity protection was the Mines Maternity Benefit Act, 1941. The Act which applied to mines provided for payment of maternity benefit to women workers at the rate of half a rupee per day for a period up to 4 weeks of absence before and 4 weeks after delivery. The Act also prohibited employment of women workers during 4 weeks following the date of delivery of a child and provided for one month of authorised absence or leave before confinement. A

woman was entitled to maternity benefit after completing six months' service preceding the date of delivery. A woman attended to by a qualified midwife at the time of delivery was entitled to a bonus in addition to the maternity benefit.

An amending Act of 1945 extended the prohibition of employment of women working underground from 4 weeks to 26 weeks after confinement. Employment of women working underground could be permitted for more than 4 hours a day during the period of 10 weeks following 26 weeks if a creche was provided in the mine. Underground women workers after completing 90 days of service were entitled to maternity benefit at the rate of Rs. 6 a week for 10 weeks immediately preceding the date of delivery and 6 weeks following it. The rate of benefit in other cases was enhanced from half a rupee to 12 annas a day. In 1963, the Mines Maternity Benefit Act was replaced by the Central Maternity Benefit Act, 1961.

The question of maternity protection was subsequently brought under the purview of the Employees' State Insurance Act, 1948. The Act provides for periodical payments to an insured woman at the prescribed rate and for a prescribed period in case of confinement or miscarriage or sickness arising out of pregnancy confinement, premature birth of a child or miscarriage.<sup>1</sup> A woman is entitled to maternity benefit under the Act after fulfilling the minimum contribution conditions. In areas where the Employees' State Insurance Act, 1948 is in force, the employers are generally absolved of their responsibility under the Maternity Benefit Acts.

The Plantation Labour Act, 1951 also provided for payment of maternity allowance to women workers in plantations but with the adoption of the Central Maternity Benefit Act, these provisions have ceased to operate.

In 1961, the Central Government enacted the Central Maternity Benefit Act with a view to reducing disparities under the existing Maternity Benefit Acts. The Act repeals the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929 in force in union territory of Delhi, and the provisions of maternity protection under the Plantation Labour Act, 1951. The main provisions of the Central Maternity Benefit Act, 1961 as amended are summarised below.

1. For details, see pp. 605-606.

## THE CENTRAL MATERNITY BENEFIT ACT, 1961 (MAIN PROVISIONS)

### Scope

The Act applies to every establishment being a factory, mine or plantation including any such establishment belonging to the government, except those factories or establishments to which provisions of the Employees' State Insurance Act, 1948 apply. The State Government may, with the approval of the Central Government, extend the application of the Act to any other establishment—industrial, commercial, agricultural, or otherwise. However, in doing so, the State Government concerned is required to give at least 2 months' prior notice by notification in the official gazettee. [Sec. 2].

### Qualifying Conditions

A woman is entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 160 days in the 12 months immediately preceding the date of her expected delivery. The qualifying period of 160 days does not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of immigration. For the purpose of calculating the days on which the woman has worked, the days on which she was laid off during the period of 12 months immediately preceding the date of her expected delivery, are to be taken into account [Sec. 5 (2)].

### Rate and Period of Maternity Benefit

A woman is entitled to maternity benefit from her employer at the rate of the average daily wage for the period of her actual absence subject to the maximum of 6 weeks immediately preceding and including the day of her delivery and for six weeks immediately following that date. For this purpose, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee, whichever is higher.

The maximum period for which any woman is entitled to maternity benefit is 12 weeks i.e. 6 weeks up to and including the day of her delivery and 6 weeks immediately following the day of delivery. Where a woman dies during this period, maternity benefit is payable only for the days up to and including the day of her death. In case a woman, having been delivered of a child, dies during her delivery or during the period of 6 weeks immediately following the date of her delivery leaving behind in either case a child, the employer is required to pay maternity benefit for the entire period of 6 weeks immediately following the day of her delivery, but in case the child also dies during the period, maternity benefit is payable for the days up to and including the day of the death of the child. [Sec. 5].

### **Medical Bonus**

Every woman entitled to maternity benefit under the Act is also entitled to receive from her employer a medical bonus of Rs. 25 if no pre-natal confinement and post-natal care is provided by the employer free of charge. [Sec. 8].

### **Claim and Payment of Maternity Benefit**

A woman entitled to maternity benefit may give notice in writing to her employer stating that her maternity benefit and any other amount to which she is entitled, may be paid to her or to a person nominated by her and that she will not work during the period for which she receives maternity benefit. In case of a pregnant woman, the notice must state the date, not earlier than 6 weeks from the expected date of delivery, from which she is to absent herself from work. If a woman fails to give the notice during her pregnancy, she may do so, as soon as possible, after the delivery. On receipt of the notice, the employer must permit the woman to absent herself from the establishment until the expiry of 6 weeks after the day of her delivery.

The amount of maternity benefit for the period preceding the expected date of delivery is to be paid in advance, but a proof of pregnancy is required. The amount due for subsequent period is to be paid within 48 hours of production of the proof that the woman has delivered of a child. The failure to give notice,

however, does not disentitle a woman to maternity benefit or any other amount if she is otherwise entitled to it. [Sec. 6].

Where a woman entitled to maternity benefit or any other amount under the Act dies before receiving it, the employer is required to pay the same to the person nominated by her in the notice, and in case there is no such nominee, to her legal representative. [Sec. 7].

### **Restriction on Employment of Women during Certain Period**

The Act prohibits the employer from knowingly employing a woman in any establishment during the 6 weeks immediately following the day of her delivery or miscarriage. Similarly, a woman worker is not allowed to work in any establishment during the aforesaid period of 6 weeks. The employer may, on the request of a woman, employ her (a) during the period of one month immediately preceding the period of 6 weeks before the expected date of delivery, or (b) during the aforesaid period of 6 weeks before the expected date of delivery (for which the pregnant woman does not avail of leave of absence). In no case, however, the woman is to be employed during the period on any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus or is likely to cause her miscarriage or otherwise to adversely affect her health. [Sec. 4].

### **Forefeiture of Maternity Benefit**

If a woman works in any establishment after she has been permitted by her employer to absent herself in accordance with the provisions of the Act for any period during the authorised absence, she forfeits her claim to the maternity benefit for the period. [Sec. 18].

### **Leave for Miscarriage**

In case of miscarriage a woman is entitled to leave with wages at the rate of maternity benefit for a period of 6 weeks immediately following the day of her miscarriage, but a proof of miscarriage is required. [Sec. 9].

**Leave for Illness arising out of Pregnancy, Delivery, etc.**

A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage is, on the production of prescribed proof, entitled to leave with wages at the rate of maternity benefit for a maximum period of one month in addition to the period of absence allowed in the event of delivery or miscarriage. [Sec. 10].

**Nursing Breaks**

Every woman who returns to duty after the delivery of a child is to be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. These breaks are in addition to the interval for rest allowed to her. [Sec. 11].

**Dismissal during Absence or Pregnancy**

The Act prohibits the employer from discharging or dismissing a woman during or on account of her authorised absence or varying to her disadvantage any of the conditions of her service during the period. The employer is also not allowed to give notice of discharge or dismissal which expires during the period of her absence.

In case a woman is discharged or dismissed at any time during her pregnancy (not during authorised absence), she is ordinarily not deprived of the maternity benefit or medical bonus. However, where the dismissal is for any prescribed gross misconduct, the employer may, by order in writing communicated to the woman, deprive her of the maternity benefit or medical bonus or both. Any woman thus deprived of the maternity benefit or medical bonus may, within 60 days from the date on which the order of deprivation was communicated to her, appeal to the prescribed authority whose decision is final. [Sec. 12].

**Deduction from Wages not allowed in Certain Cases**

No deduction from the normal or usual daily wages of a woman entitled to maternity benefit is to be made by reason only of :

- (a) non-arduous nature of work assigned to her under the Act; and
- (b) breaks for nursing of child allowed to her. [Sec. 13].

### **Effects of Laws and Agreements Inconsistent with the Act**

The provisions of the Act apply even if these are inconsistent with the provisions of any other law, terms of any award, agreement or contract of service, whether made before or after the coming into force of the Act.

However, where under any award, agreement, contract of service or otherwise, a woman is entitled to benefits which are more favourable to her than those to which she is entitled under the Act, the woman is to continue to be entitled to the more favourable benefits. The Act does not preclude a woman from entering into an agreement with her employer for granting her rights or privileges in respect of any matter which are more favourable to her than those to which she would be entitled under the Act. [Sec. 27].

### **Power to Exempt Establishments**

If the appropriate government is satisfied that having regard to an establishment providing for the grant of benefits which are not less favourable than those provided under the Act, it may exempt the establishment from the operation of all or any provisions of the Act and the rules framed under it. [Sec. 26].

### **Inspectors**

The appropriate government may appoint officers as Inspectors for the purposes of the Act and may define the local limits of the jurisdiction within which they are to perform their functions. The powers and duties of the Inspectors have been specified under the Act.

### **Certain Obligations on the Employers**

The employer is required to exhibit an abstract of the provisions of the Act and the rules framed under it in the language of the locality in a conspicuous place in every part of the

establishment in which women are employed. Every employer is required to prepare and maintain prescribed registers, records and muster-rolls in the prescribed manner. [Secs. 19-20].

Contravening the provisions of the Act and rules framed under it or obstructing an Inspector is a penal offence.

### **Cognizance of Offences, etc.**

No prosecution for an offence punishable under the Act or any rule framed under it is to be instituted after the expiry of one year from the date on which the offence is alleged to have been committed and no such prosecution is to be instituted except by, or with the sanction of, the Inspector. No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class is empowered to try any such offence. A suit, prosecution or other legal proceeding does not lie against any person for anything which is done in good faith or intended to be done in pursuance of the Act or any rule framed under it. [Secs. 23-24].

### **Power of the Central Government to give Directions**

The Central Government may give necessary directions to the State Government regarding carrying into execution the provisions of the Act and the State Government is required to comply with such directions. [Sec. 25].

### **Power to make Rules**

The power to make rules vests both in the Central and State Governments in their respective jurisdictions.

### **Maternity Benefit where Employees' State Insurance Act is in force**

In areas where the Employees' State Insurance Act is in force, the employers are absolved of their liability under the Maternity Benefit Acts.

## **CHAPTER 23**

### **SOCIAL SECURITY LEGISLATION IN INDIA (3) (THE EMPLOYEES' STATE INSURANCE ACT, 1948)**

The main purpose of the Employees' State Insurance Act, 1948 is to provide medical, sickness and maternity benefits as well as compensation for work-injuries resulting in disablement and death on the basis of the principles of social insurance. Till 1948, there was no legislation providing for the health insurance and the medical treatment of the industrial workers nor for the payment of wages during periods of sickness. Whatever schemes were in operation in individual concerns were voluntary in nature. Maternity Benefit Acts were there and compensation for work-injuries was available under the Workmen's Compensation Act, 1923. The Employees' State Insurance Act seeks to bring all these benefits under one integrated scheme. The scheme is to be financed by contributions at specified rates from the covered employees and the employers. The medical benefit is to be provided by the State Governments and the E.S.I. Corporation on a scale to be determined by them.

#### **SCOPE**

The Act, which extends to the whole of the country except the State of Jammu & Kashmir, applies in the first instance to all factories other than seasonal factories. For the purposes of the Act, "factory" means premises including the precincts, in any part of which, a manufacturing process is carried on with the aid of power and in which twenty or more persons are ordinarily employ-

ed. This definition of "factory" is narrower in scope as compared to that given under the Factories Act, 1948. The Act covers all categories of employees of perennial factories drawing wages (excluding remuneration for overtime) not more than Rs. 500 per month.

The Central Government (in consultation with the E.S.I. Corporation) and the State Government (with the approval of the Central Government) may extend the provisions of the Act to any other establishment (industrial, commercial, agricultural or otherwise) after making a 6 months' prior notification in the official gazette. The date for the enforcement of the Act in any particular area is to be specified by the Central Government.

### Exceptions

The appropriate government is empowered to exempt any factory or establishment or class of factories or establishments in any specified area from the operation of the Act for a period not exceeding one year, and may from time to time, renew the exemption for a period not exceeding one year at a time. Similarly, the appropriate government may make exemption in respect of any person or class of persons employed in any factory or establishment or class of factories or establishments from the operation of the Act. In both the cases, a prior notification in the official gazette is necessary. The appropriate government may also notify the conditions subject to which the exemption may be granted or renewed. However, in granting or renewing an exemption, the appropriate government is required to consider any representation made by the Employees' State Insurance Corporation.

In case employees in any factory or establishment owned by the government or a local authority are in receipt of benefits substantially similar or superior to the benefits provided under the Act, the appropriate government may make exemptions in respect of such factory or establishment [Sec. 90]. The appropriate government may, in consultation with the Corporation, exempt employees in any factory or establishment from one or more of the provisions relating to benefits provided under the Act. [Sec. 91].

An exemption granted in any of the cases noted above may take effect either prospectively or retrospectively on such date as specified in the notification. [Sec. 91-A].

### SOME IMPORTANT DEFINITIONS

#### Appropriate Government

“Appropriate government” means, in respect of establishments under the control of Central Government, a railway administration, a major port, a mine or oil-field, the Central Government; and in all other cases, the State Government. [Sec. 2(1)].

#### Seasonal Factory

“Seasonal factory” is a factory which is exclusively engaged in the manufacturing processes of cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar and gur, or tea, or any manufacturing process which is incidental to or connected with the aforesaid processes. A seasonal factory also includes a factory which is engaged for a period not exceeding seven months in a year (a) in any process of blending, packing, or repacking of tea or coffee, or (b) in any other manufacturing process specified by the Central Government. [Sec. 2(12)].

#### Principal Employer

“Principal employer” means “(i) in factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as a manager of the factory under the Factories Act, 1948 . . . the person so named; (ii) in any establishment under the control of a department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department; (iii) in any other establishment, any person responsible for the supervision and control of administration.” [Sec. 2(17)].

#### Immediate Employer

“Immediate employer” in relation to employees employed by

or through him means “a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer.” [Sec. 2(13)]

### Employee

“Employee” means any person employed for wages in or in connection with the work of a factory or establishment covered under the Act and (a) who is directly employed by the principal employer or (b) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent, or (c) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service. The term “employee” includes any person employed for wages or any work connected with the administration of the factory or establishment or any of its part, department or branch or with the purchase of raw materials for, or the distribution or sale of the products of the factory or establishment; but does not include—

- (a) any member of the Indian naval, military or air force;
- (b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month.

An employee whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month at any time after the beginning of the contribution period continues to be an employee until the end of the period. [Sec. 2(9)].

### Wages

The term “wages” means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employ-

ment (express or implied) were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lockout, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;
- (d) any gratuity payable on discharge. [Sec. 22].

### Dependant

“Dependant” means any of the following relatives of a deceased insured person, namely,

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and
- (ii) if wholly dependent on the earnings of the insured person at the time of his death, legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time of his death, (a) parent other than a widowed mother, (b) a minor illegitimate son, an unmarried illegitimate daughter, or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor, (c) a minor brother or an unmarried sister or a widowed sister if a minor, (d) a widowed daughter-in-law, (e) a minor child of a predeceased son, (f) a minor child of a predeceased daughter where no parent of the child is alive, or (g) a paternal grand-parent if no parent of the insured person is alive. [Sec. 2.(6A)].

### 'Contribution' and 'Benefit' Periods

The Act defines 'contribution period' as such period, being not less than 25 but not exceeding 27 consecutive weeks or six consecutive months, as may be specified by the regulations. [Sec. 2(5)]. 'Benefit period' is such period, being not less than 25 but not exceeding 27 consecutive weeks or six consecutive months corresponding to the contribution period, as may be specified in the regulations. In case of the first benefit period, a longer or shorter period may be specified. [Sec. 2(2)].

The 'contribution periods' and the corresponding 'benefit periods' as specified in the Employees' State Insurance (General) Regulations, 1950 are shown in Table 32.

TABLE 32

**'Contribution Periods' and Corresponding 'Benefit Periods' under the Employees' State Insurance (General) Regulations**

<i>Contribution Period</i>		<i>Corresponding Benefit Period</i>		<i>Name of the set</i>
<i>Beginning with the midnight of the last Saturday in</i>	<i>Ending with the midnight of the last Saturday in next</i>	<i>Beginning with the midnight of the last Saturday in</i>	<i>To the midnight of the last Saturday in next</i>	
1	2	3	4	5
(i) January	July	October	April	'A'
(ii) July	January	April	October	
(iii) March	September	December	June	'B'
(iv) September	March	June	December	
(v) May	November	February	August	'C'
(vi) November	May	August	February	

The Regulations require the appropriate Regional Office or the employer (in accordance with the instructions issued by the Employees' State Insurance Corporation) to allot each employee on the 'appointed day' (i.e. the day from which the whole provisions of the Act pertaining to contributions and benefits apply), one of the sets A, B or C of the contribution period. The first contribution period and the corresponding benefit period for such a

person is to commence and end on such dates as the Director General may determine for the set of contribution periods allotted to him.

In the case of a person who becomes an employee within the meaning of the Act for the first time after the 'appointed day' the set of contribution periods to be allotted to him is as indicated in Table 33. The first contribution period in respect of the person is to commence from the midnight of the night of Saturday immediately preceding the day on which he becomes an employee and is to end when the then current contribution period belonging to the set allotted to him ends.

TABLE 33

Contribution Periods and the Corresponding Benefit Periods in  
Respect of Employees Covered after the 'Appointed Day'

<i>Date of commencing work falling in the calendar months</i>	<i>Set</i>	<i>Contribution Period</i>	<i>Corresponding benefit period</i>
1	2	3	4
(i) February-March	A	January-July	October-April
(ii) April-May	B	March-September	December-June
(iii) June-July	C	May-November	February-August
(iv) August-September	A	July-January	April-October
(v) October-November	B	September-March	June-December
(vi) December-January	C	November-May	August-February

### Temporary Disablement

It is a condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury. [Sec. 2 (21)].

The definitions of "permanent partial disablement" and "permanent total disablement" are the same as those given under

the Workmen's Compensation Act.<sup>1</sup>

### CONTRIBUTIONS

The rates of contribution payable by the insured employees in various wage-groups and their employer as specified in the First Schedule of the Act are given in Table 34.

TABLE 34

Weekly Rates of Contribution Payable by Insured Employee and his Employer under the Employees' State Insurance Act

<i>Group of employees whose average daily wages are</i>	<i>Employee's weekly contribution</i> <i>P</i>	<i>Employer's weekly contribution</i> <i>P</i>	<i>Total</i> <i>P</i>
1. Below Re. 1	Nil	45	45
2. Re. 1 and above but below Rs. 1.50	Nil	45	45
3. Rs. 1.50 and above but below Rs. 2	25	50	75
4. Rs. 2 and above but below Rs. 3	40	80	120
5. Rs. 3 and above but below Rs. 4	50	100	150
6. Rs. 4 and above but below Rs. 6	70	140	210
7. Rs. 6 and above but below Rs. 8	95	190	285
8. Rs. 8 and above but below Rs. 15	125	250	375
9. Rs. 15 and above	175	350	525

The amount of weekly contribution payable in a contribution period in respect of an employee is calculated with reference to the average daily wages during the first wage period of that employee ending in such contribution period. However, where an

<sup>1</sup> See also Chapter 21, pp. 565-566.

employee changes his employment during the currency of the contribution period, contributions in respect of him are to continue to be calculated during the said contribution period at the rate at which they were being paid in the first employment except when the employee does not disclose the earlier employment to the second or subsequent employer in which case they may be calculated with reference to the average daily wages during the first wage period in the latter employment.

The average daily wages are to be calculated in the following manner :

- (a) in respect of an employee who is employed on time-rate basis, the average daily wages comprise the amount of wages which would have been payable to him for the complete wage period had he worked on all the working days in that wage period, divided by 26 if he is monthly rated, 13 if he is fortnightly rated, 6 if he is weekly rated and 1 if he is daily rated ;
- (b) in respect of an employee employed on any other basis, the amount of wages earned during the first complete wage period in the contribution period divided by the number of days in full or part for which he worked for wages in that wage period.

Where an employee receives wages without working on any day during such wage period, he is deemed to have worked for 26, 13, 6 or 1 days or day if the wage period be a month, a fortnight, a week or a day, respectively. Where any night shift continues beyond midnight, the period of the night shift after midnight is to be counted for reckoning the days worked as part of the day preceding.

The contribution payable in respect of each week ordinarily falls due on the last day of the week, and where an employee is employed for part of the week, or is employed under two or more employers during the same week the contribution falls due on such days as specified in the regulations. [Sec. 39(4)].

### **Rates of Contribution where all the Benefits are not Available**

The rates of contribution mentioned in Table 34 are applicable where the employees are entitled to all the benefits under the Act.

However, where the Act is applied in such a manner as the insured employees are excluded from some of the benefits under the Act, contribution is payable at such rates as fixed by the Corporation. [Sec. 39].

### **Liability of the Principal Employer to Pay Contribution in the First Instance**

The principal employer is required to pay both the employer's and employee's contributions in respect of every employee whether directly employed by him or by an immediate employer. The principal employer is, however, authorised to recover from the employee the employee's contribution by deduction from his wages. Such a deduction is to be made only from the wages which relate to the period or part of the period in respect of which the contribution is payable, and the amount must not be in excess of the sum representing the employee's contribution for the period. The employer (principal or immediate employer) is not entitled to deduct the employer's contribution from the wages payable to an employee or to recover it from him otherwise. The expenses of remitting the contributions to the Corporation are to be borne by the principal employer. [Sec. 40].

A principal employer who has paid contribution in respect of an employee employed by or through an immediate employer, is entitled to recover the same from the immediate employer. Similarly, an immediate employer is entitled to recover the amount of contribution paid in respect of an employee from his wages in the same manner as the principal employer is authorised to do. [Sec. 41].

### **Method of Paying Contribution**

The Corporation is empowered to make regulations in respect of any matter concerning the payment and collection of contributions. [Sec. 43].

### **Recovery of Contribution**

Contributions payable under the Act are recoverable as an arrear of land revenue. [Sec. 45-B].

### **Transitional Provisions Pertaining to Employer's Contribution**

Though the Act of 1948 applies to the whole of India, it was not possible to implement it throughout the country simultaneously. Therefore, a scheme of phased implementation of the Act was framed by the Corporation, and it was intended that it should be introduced in the first instance in Delhi and Kanpur in July, 1950. However, the introduction of the scheme only in a few regions without its simultaneous application in other areas was objected to on the grounds that it would raise the cost of production and diminish the competitive position of industries located in these regions. The Government of India recognised the force of these contentions and decided to ensure an equitable distribution of the employer's contribution all over the country. Accordingly, an amending Act was passed in 1951 which provided for the payment of special contribution by employers for the transitional period till the original Act was implemented throughout the country. The employer's special contribution is payable in both the cases i.e. where the Act is in force and where it is not in force, but the rates vary. Where the provisions pertaining to the contributions and benefits under the original Act are in force, the employer's special contribution is in lieu of the contribution payable under the Act. (see Table 34).

### **The Rate of Employer's Special Contribution**

The employer's special contribution is to consist of such percentage not exceeding five per cent of the total wage bill of the employee as the Central Government may by notification in the official gazette specify from time to time. However, before fixing or varying the percentage, the Central Government is required to give at least two months' prior notice of its intention to do so, and to specify in the notification, the percentage proposed to be fixed or the extent to which the percentage already fixed is to be varied. In case of factories or establishments situated in any area in which the provisions pertaining to contributions and benefits under the original Act are in force, the employer's special contribution is to be fixed at a rate higher than that fixed in respect of factories or establishments situated in any area where these provisions are not in force.

The employer's special contribution generally falls due as soon as the liability of the employer to pay wages accrues, but it may be paid at such interval, within such time and in such manner as specified by the Central Government. The wage periods in respect of which the total wage bill is to be calculated are also to be specified by the Central Government. [Sec. 73-A].

### **Exemption**

The Central Government may, after taking into account the size, location or the nature of industries, exempt any factory or establishment from the payment of employer's special contribution. [Sec. 73-F].

### **Disputes Concerning Employer's Special Contribution**

Disputes concerning payment or recovery of employer's special contribution are to be decided by the Employees' State Insurance Court having jurisdiction to try such questions, and in case there is no such Court, by an authority specified by the Central Government. [Sec. 73-B].

The provisions pertaining to employer's special contribution are to remain in force till such date as is specified by the Central Government [Sec. 73-I]. As the scheme has been brought into operation all over the country, the requirement of paying employer's special contribution has been abolished with effect from July, 1973.

## **BENEFITS**

The Act provides for the following benefits:

- (1) Sickness benefit;
- (2) Maternity benefit;
- (3) Disablement benefit;
- (4) Dependants' benefit;
- (5) Medical benefit; and
- (6) Funeral benefit.

It should be clearly understood here that, whereas one of the qualifying conditions for sickness, maternity and medical benefits is that necessary contributions must have been payable or paid during the appropriate contribution period, the disablement, dependants' and funeral benefits are available without any such qualifying contribution conditions. The disablement and dependants'

benefits are similar to the benefits available under the Workmen's Compensation Act, 1923. As the Workmen's Compensation Act provides for the payment of compensation without requiring any contribution from the workmen, the Employees' State Insurance Act, 1948 also does not require the workmen to pay contributions for becoming entitled to these benefits. It is further to be noted that the rates of disablement and dependants' benefits are 25 per cent higher than the rate of sickness benefit; and the rate of maternity benefit is twice the rate of sickness benefit. Though under the Maternity Benefit Acts, maternity benefit is available without the beneficiary being required to make any contributions, the Employees' State Insurance Act, 1948 prescribes necessary contributions to be made as one of the qualifying conditions. However, as the rate of maternity benefit is higher under the Employees' State Insurance Act than under the Maternity Benefit Acts, the beneficiaries are compensated for their contributions.

### **(1) Sickness Benefit**

Sickness benefit consists of periodical payments in cash to an insured employee in the event of his sickness certified by a duly appointed medical practitioner or by any other person possessing such qualifications and experience as specified by the Corporation. [Sec. 46].

As the sickness benefit is intended to make up partially the wage loss suffered by an employee for absence on account of sickness, it is pertinent to discuss the extent of the wage loss compensation as provided under the Act. The periodical payments do not compensate fully for the wage loss as the rate of sickness benefit approximates only half of the wage loss, as will be evident from Table 35. For example, the daily rate of sickness benefit for an employee falling in the wage group Rs. 3 and above but below Rs. 4 per day is Rs. 1.75. It is evident from the table that for the worker nearing the upper wage limit in every wage group, the benefit rate is less than half of his average daily wages. This gap of uncompensated wage loss goes on increasing for the workers falling in the higher wage groups.

### ***Qualifying Conditions***

An insured employee is qualified to claim sickness benefit in

respect of his sickness occurring during any benefit period, if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than 13 weeks. However, in case of the first benefit period, an insured employee is qualified to claim the benefit, if during the corresponding contribution period, weekly contributions in respect of him were payable for not less than half the number of weeks of the contribution period. [Sec. 47].

### *Rate of Sickness Benefit*

The daily rate of sickness benefit during any benefit period is the standard benefit rate (as shown in Table 35) corresponding to the average daily wages of the insured employee during the corresponding benefit period.

### *Standard Benefit Rates*

The Act specifies the daily standard benefit rates (First Schedule) for employees in various wage groups in relation to which sickness, maternity, disablement, and dependants' benefits are to be paid. These are shown in Table 35.

TABLE 35

Standard Benefit Rates for Insured Employees in Various Wage Groups  
Specified under the Employees' State Insurance Act, 1948

Sl. No.	Group of employees whose average daily wages are	Corresponding daily standard benefit rate
		p.
1.	Below Re. 1	45
2.	Re. 1 and above but below Rs. 1.50	65
3.	Rs. 1.50 and above but below Rs. 3	90
4.	Rs. 2 and above but below Rs. 3	130
5.	Rs. 3 and above but below Rs. 4	175
6.	Rs. 4 and above but below Rs. 6	250
7.	Rs. 6 and above but below Rs. 8	350
8.	Rs. 8 and above but below Rs. 15	500
9.	Rs. 15 and above	850

*Period for which Sickness Benefit is payable*

Sickness benefit is payable for the period of sickness, subject to the maximum of 56 days in any two consecutive benefit periods which in effect means one year. An insured employee is not entitled to sickness benefit for the first 2 days of sickness, except in the case where the spell of sickness for which sickness benefit was last paid is followed by another spell at an interval of not more than 15 days. [Sec. 49].

**(2) Maternity Benefit**

Maternity benefit comprises periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage on the certification by the authority specified under the regulations. [Sec. 46 (b)].

*Qualifying Conditions*

An insured woman is qualified to claim maternity benefit for a confinement occurring or expected to occur in any benefit period, if during the corresponding contribution period, weekly contributions in respect of her were payable for not less than 13 weeks. However, in case of the first benefit period, an insured woman is also qualified to claim maternity benefit, if during the corresponding contribution period, weekly contributions in respect of her were payable for not less than half the number of weeks of the period.

*The Rate and Duration of Maternity Benefit*

The daily rate of maternity benefit is equal to twice the standard benefit rate corresponding to the average daily wages (as shown in Table 35) in respect of the insured woman during the corresponding contribution period.

Maternity benefit is payable for all days on which the insured woman does not work for remuneration during a period of 12 weeks of which not more 6 weeks is to precede the expected date of confinement.

Where the insured woman dies during her confinement or during the period of 6 weeks immediately following her confinement, leaving behind the child, maternity benefit is payable for the whole of that period. In case the child also dies during this period, maternity benefit is payable for the days upto and including the day of death of the child. In either case, the amount is payable to a person nominated by the insured woman in a manner specified in the regulations, and if there is no such nominee, to her legal representative.

In case of miscarriage, an insured woman is entitled to maternity benefit at the usual rate for all days on which she does not work for remuneration during a period of 6 weeks immediately following the date of her miscarriage. She is, however, required to produce a proof of miscarriage.

In the event of sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage, an insured woman is entitled to additional maternity benefit at the usual rate for all days of sickness on which she does not work for remuneration subject to the maximum of one month. In this case also, she is required to produce a proof of sickness. [Sec. 50].

### **(3) Disablement Benefit**

Disablement benefit is payable to an insured person suffering from disablement as a result of employment injury, but a certification of disablement by an authority specified under regulations is necessary. Like sickness and maternity benefits, disablement benefit is also payable periodically. [Sec. 46 (c)].

Disablement benefit is payable both for temporary and permanent disablement (whether total or partial). The Second Schedule of the Act specifies the injuries which are deemed to result in permanent total, and permanent partial disablement. Besides, the Third Schedule of the Act enlists certain occupational diseases which are to be considered as injuries caused by accident, and arising out of and in the course of employment. The lists of injuries deemed to result in permanent total and permanent partial disablement, and also the occupational diseases are the same as those specified in the Workmen's Compensation Act (see Appendixes 5 and 6).

*Rate and Duration of Disablement Benefit*

The daily "full rate" of disablement benefit is 25 per cent more than the standard benefit rate rounded to the next higher multiple of five paise corresponding to the average daily wages (see Table 35) in the contribution period corresponding to the benefit period in which the employment injury occurs. Where an employment injury occurs before the commencement of the first benefit period, the daily "full rate" of disablement benefit is to be as follows:

- (a) Where a person sustains employment injury after the expiry of the first wage period in the contribution period in which the injury occurs, the "full rate" is the rate (calculated in the manner noted above) corresponding to the wage group in which his average daily wages during that wage period fall ;
- (b) Where the person sustains employment injury before the expiry of the first wage period in the contribution period in which the injury occurs the "full rate" is the rate (calculated in the manner noted above) corresponding to the group in which wages actually earned or which would have been earned had he worked for a full day on the date of accident, fall.

For both temporary and permanent disablement, disablement benefit is payable at the "full rate".

In case of an injury specified in Appendix 5 (Part II of the Second Schedule), disablement benefit is such percentage of the "full rate" (which would have been payable in the case of permanent disablement) as is the percentage loss of earning capacity. If an injury resulting in permanent partial disablement is not included in the list (Appendix 5) disablement benefit is to be such percentage of the "full rate" as is proportionate to the loss of earning capacity permanently caused by the injury. In all other cases, it is payable at a rate (not exceeding the "full rate") as specified in the regulations. Where more injuries than one resulting in permanent partial disablement are caused by the same accident, the rate of benefit payable is to be aggregated, but in no case the total is to exceed the "full rate".

*Duration of Disablement Benefit*

Disablement benefit in respect of a temporary disablement is payable after a waiting period of three days (excluding the day of accident) and is to continue to be paid till the period of disablement. In case of permanent disablement, whether partial or total, the benefit is payable for life.

**Occupational Diseases**

Contracting of certain occupational diseases peculiar to specified employments (Third Schedule) is also considered as an injury and disablement benefit is payable accordingly. The names and classes of occupational diseases and the employments to which they are peculiar, and also the conditions under which these diseases are to be considered as injuries by accident arising out of and in the course of employment are the same as those specified under the Workmen's Compensation Act (see Appendix 6). [Sec. 52-A].

**Presumption as to Accident Arising in the Course of Employment**

For the purposes of the Act (excepting those pertaining to occupational diseases), an accident arising in the course of an insured person's employment is presumed, in absence of evidence to the contrary, also to have arisen out of employment. [Sec. 51-A].

**Accidents Happening while Acting in Breach of Regulations**

An accident is deemed to arise out of and in the course of an insured person's employment notwithstanding that he was at the time of the accident acting in contravention of the provisions of any law applicable to him, or of any orders given by or on behalf of his employer or that he was acting without instructions from his employer, if (a) the accident would have been deemed so to have arisen had the act not been done in contravention of the provisions of law or without instruction from his employer, and (b) the act was done for the purpose of and in connection with employer's trade or business. [Sec. 51-B].

### **Accidents happening while travelling in Employer's Transport**

An accident happening while an insured person was travelling as a passenger by any vehicle to or from his place of work with the express or implied permission of his employer arises out of and in the course of employment (notwithstanding that he is under no obligation to his employer to travel by that vehicle) on the following conditions:

- (1) if the accident would have been deemed so to have arisen had he been under such obligation; and
- (2) if, at the time of the accident, the vehicle (a) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and (b) is not being operated in the ordinary course of public transport service. [Sec. 51-C].

### **Accidents happening while meeting Emergency**

An accident happening to an insured person in or about any premises at which he is for the time being employed for his employer's trade or business arises out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are or are likely to be injured or imperilled or to avert or minimise serious damage to property. [Sec. 51-D].

### **Determination of questions of disablement**

All questions pertaining to accidents resulting in permanent disablement, assessment of the loss of earning capacity, and period of operation of the provisional assessment are to be decided by a medical board constituted in accordance with the regulations. The Corporation is required to refer every case of permanent disablement to the medical board for determination. Where an assessment has been made provisionally it is to be referred again to the board before the expiry of the period of operation of the provisional assessment.

An appeal against the decision of the medical board lies with a Medical Appeal Tribunal with a further right of appeal to the

**Employees' Insurance Court.** An appeal against the decision of the medical board may also be filed directly to the Employees' Insurance Court.

A decision of a medical board or Medical Appeal Tribunal may be reviewed if it is shown that the earlier decision was given in consequence of non-disclosure or mis-representation of a material fact. An assessment regarding extent of disablement may also be reviewed if there has been a substantial and unforeseen aggravation of the results of the injury since the making of the last assessment. Except with the leave of a Medical Appeal Tribunal, an assessment is to be reviewed only if an application has been made within 5 years of a final assessment, and 6 months from the date of provisional assessment, as the case may be.

#### **(4) Dependants' Benefit**

Dependants' benefit is payable in the form of periodical payments to the dependants of an insured person who dies as a result of an employment injury. [Sec. 46 (d)]. The benefit is payable to (a) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother, and (b) an infirm legitimate or adopted son or daughter of 18 or over who was wholly dependent on the earnings of the insured person at the time of his death. Only in case the insured person does not leave behind any dependants noted above, the benefit is payable to other dependants<sup>1</sup>. [Sec. 52].

Like the disablement benefit, the daily "full rate" of dependants' benefit is the rate 25 per cent more than the standard benefit rate (see Table 35) rounded to the next higher multiple of 5 paise in relation to the average daily wages in the contribution period corresponding to the benefit period in which the employment injury occurs. The daily full rate of dependants' benefit in respect of an employment injury before the commencement of the first benefit period is to be calculated in the same manner as in the case of the disablement benefit.

The rates and duration of dependants' benefit for different categories of dependants are as follows:

(a) In case of a widow, dependants' benefit is payable at an

1. For the definition of "dependants", see p. 595.

- amount equivalent to  $\frac{3}{5}$ th of the "full rate" during her life or until re-marriage. If there are two or more widows, the amount is to be divided equally among them.
- (b) Each legitimate or adopted son is entitled to the benefit at the rate of  $\frac{2}{5}$ th of the "full rate" until he attains 18 years of age. However, in the case of an infirm legitimate son who was wholly dependent on the earnings of the insured person at the time of his death, payment of the benefit is to continue till the period of infirmity.
- (c) Dependants' benefit for each legitimate or adopted unmarried daughter is an amount equivalent to  $\frac{2}{5}$ th of the "full rate" payable until she attains 18 years of age or until marriage, whichever is earlier. In the case of an infirm legitimate or adopted unmarried daughter who was wholly dependent on the earnings of the insured person at the time of his death, dependants' benefit is to continue to be paid while the infirmity lasts and she continues to be unmarried.

*The Total Amount of Dependants' Benefit not to Exceed the Full Rate*

- (d) If the total of the dependants' benefit distributed among the widow or widows and legitimate or adopted children of the deceased person exceeds at any time the "full rate", the share of each of the dependants is to be proportionately reduced so that the total amount payable to them does not exceed the amount of disablement benefit at the "full rate".

*Other Dependants*

In case the deceased person does not leave a widow, or legitimate or adopted child, dependants' benefit is payable to other dependants in the following manner:

- (a) to a parent or grand-parent at an amount equivalent to  $\frac{3}{10}$ th of the "full rate" for life; and if there are two or more parents or grand-parents, the amount payable is to be equally divided between them;
- (b) to a male dependant (other than that in (a) above) at an

amount equivalent to  $\frac{2}{10}$ th of the "full rate" until he attains 18 years of age; and if there are more than one such dependant, the amount is to be equally divided between them; and

- (c) to a female dependant (other than that in (a) above), an amount equivalent to  $\frac{2}{10}$ th of the "full rate" until she attains 18 years of age or until re-marriage, whichever is earlier, or if widowed, until she attains 18 years of age. [Sec. 52 and First Schedule].

### *Review of Dependants' Benefit*

Any decision awarding dependants' benefit may be reviewed at any time by the Corporation if it is satisfied that the decision was given in consequence of non-disclosure or misrepresentation by the claimant or any other person of a material fact or that the decision is no longer in accordance with the Act due to any birth or death or due to marriage, re-marriage or end of infirmity or attainment of the age of 18 years by the claimant. Accordingly, the Corporation may direct that dependants' benefit be continued, increased, reduced or discontinued, depending on the nature of the case.

### **A Comparison with the Workmen's Compensation Act**

It has been said earlier that the Workmen's Compensation Act, 1923 does not apply to persons covered by the Employees' State Insurance Act. The question naturally arises, "Are the benefits for work-injuries under the Employees' State Insurance Act superior to the compensation available for similar injuries under the Workmen's Compensation Act?" So far as the eligibility conditions are concerned, the Employees' State Insurance Act follows, more or less, the same principles as those laid down in the Workmen's Compensation Act. The qualifying conditions of accidents "arising out of" and "in the course of" employment are the same in both the Acts. The principles on which the worker's contributory negligence is determined are also the same.

However, the rates and the duration of the benefits are different under the two Acts except for temporary disablement for

which the benefits are equal to approximately half the normal wages under both the Acts. In case of death and permanent total disablement, the Workmen's Compensation Act makes a lump sum payment, whereas the Employees' State Insurance Act has adopted the principle of periodic payments. The Employees' State Insurance Act provides for the payment of disablement benefit for total permanent disablement at the "full rate" for life. Whereas the dependants of the deceased in the case of fatal accidents receive a lump sum payment under the Workmen's Compensation Act, they receive a periodic payment under the Employees' State Insurance Act. Insofar as periodic payments are supposed to be superior to the payment of a lump sum, the benefits under the Employees' State Insurance Act can also be said to be superior. It is, however, difficult to calculate whether the total quantum of benefit for permanent total disablement or death would be higher under the Employees' State Insurance Act as compared to that available under the Workmen's Compensation Act.

### **(5) Medical Benefit**

Medical benefit is payable in the form of medical treatment for and attendance on insured persons. The Corporation may, at the request of the appropriate government and subject to conditions laid down in the regulations, extend the medical benefit also to the family of an insured person. [Secs. 46(f), (2)].

An insured person or a member of his family (where the benefit has been extended to the family) is entitled to the medical benefit if his condition requires medical treatment and attendance. A person is entitled to the benefit during any week for which contributions are payable in respect of him or in which he is qualified to claim sickness benefit or maternity benefit, or is in receipt of such disablement benefit which does not disentitle him to medical benefit under the regulations. However, a person in respect of whom contribution ceases to be payable under the Act may be allowed medical benefit for such period and of such nature as may be provided under the regulations. [Secs. 56(1), (3)].

#### *Form of Medical Benefit*

Medical benefit may be given either in the form of out-patient

treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution. [Sec. 56(2)].

### *Scale of Medical Benefit*

A person is entitled to receive medical benefit only of such kind and on such scale as may be provided by the State Government or by the Corporation. He does not have the right to claim any medical treatment other than that provided by the dispensary, hospital, clinic or other institution to which he is allotted or that provided by regulations. An insured person or a member of his family is not entitled to claim reimbursement from the Corporation of any expenses incurred in respect of any medical treatment, except that authorised under the regulations. [Sec. 57].

### **Provision of Medical Treatment by State Government**

The State Government is required to provide for medical, surgical and obstetric treatment for the insured persons, and their families (where the benefit has been extended to the families). The State Government may, with the approval of the Corporation, arrange for medical treatment at clinics of medical practitioners on an agreed scale. In case the incidence of sickness benefit payment to insured persons in any State is found to exceed the all-India average, the amount of such excess is to be shared between the Corporation and the State Government in a proportion fixed by agreement between them. The Corporation may, however, waive the recovery of the whole or any part of the share which is to be borne by the State Government.

The Corporation may enter into an agreement with a State Government in regard to the nature and scale of the medical treatment to be provided to the insured persons and their families and for sharing of cost of the same. In default of an agreement sharing is to be determined by an arbitrator (having the qualification of a Judge of the High Court) appointed by the Chief Justice of India. The award of the arbitrator is binding on the parties. [Sec. 58].

### **Establishment and Maintenance of Hospital, etc., by the Corporation**

The Corporation may with the approval of the State Government, establish and maintain in a State, hospitals, dispensaries and other medical and surgical services for the benefit of the insured persons and their families. Similarly, the Corporation is empowered to enter into agreement with any local authority, private body or individual in regard to the provision of medical treatment and attendance. [Sec. 59].

### **Provision of Medical Benefit by the Corporation in lieu of the State Government**

The Corporation is empowered to undertake the responsibility for providing medical benefit to insured persons or their families in consultation with the State Government concerned. In such a case, the State Government is to share the cost of the benefit in a proportion agreed upon between them. [Sec. 59-A].

### **(6) Funeral Benefit**

Funeral benefit comprises payment towards the expenditure on the funeral of an insured person who has died. It is payable to the eldest surviving member of the deceased person's family. Where the insured person did not have a family or was not living with his family, the benefit is payable to the person who actually incurs the expenditure of the funeral.

The amount of funeral benefit is not to exceed rupees one hundred. A claim for payment of the benefit must be made within 3 months of the death of the insured person or within such extended period as allowed by the Corporation or an officer or authority of the Corporation authorised to do so. [Sec. 46(f)].

## **MISCELLANEOUS PROVISIONS PERTAINING TO BENEFITS**

### **Benefits not to be Combined**

An insured person is not entitled to receive for the same period (a) both sickness benefit and maternity benefit, or (b) both sickness benefit and disablement benefit for temporary disablement, or (c)

both maternity benefit and disablement benefit for temporary disablement. In case a person is entitled to more than one of the benefits noted above, he is entitled to choose the benefit which he wants to receive. [Sec. 65].

### **Observance of Certain Conditions by the Recipients of Sickness or Disablement Benefit**

A person in receipt of sickness benefit or disablement benefit for temporary disablement is required to observe the following:

- (a) to remain under medical treatment at a dispensary, hospital, clinic or other institution provided under the Act and to carry out the instructions given by the medical officer or medical attendant incharge;
- (b) while under treatment, not to do anything which retards or prejudices his chances of recovery;
- (c) not to leave the area in which medical treatment provided by the Act is being given without the permission of the authority empowered to do so; and
- (d) to allow himself to be examined by a duly appointed medical officer or other person authorised by the Corporation [Sec. 64].

### **Persons not Entitled to Benefits in Certain Cases**

A person is not entitled to sickness benefit, maternity benefit or disablement benefit for temporary disablement in respect of any day on which he works and receives wages. [Sec. 63].

### **Benefit Payable upto and Including the Day of Death**

Where a person dies during any period in which he is entitled to cash benefit under the Act (excepting the maternity benefit), the amount of the benefit upto and including the day of his death is to be paid to any person nominated by the deceased person in writing. In case there is no such nomination, it is to be paid to the heir or legal representative of the deceased person [Sec. 71].

### **Benefit not Assignable or Attachable**

The right to receive payment of any benefit under the Act is

neither transferable nor assignable. No cash benefit payable under the Act is liable to attachment or sale in execution of any decree or order of any Court. [Sec. 60].

### **Bar of benefits under other Enactments**

In case a person is entitled to any of the benefits provided by the Employees' State Insurance Act, he is not authorised to receive any similar benefit admissible under the provisions of any other enactment. [Sec. 61]. Thus, a person is not authorised to get compensation under the Workmen's Compensation Act, 1923 or a maternity benefit under a Maternity Benefit Act, if he or she is entitled to disablement benefit or maternity benefit under the Employees' State Insurance Act.

### **Persons not to commute Cash Benefits**

No person is entitled to commute for a lump sum any periodical payment admissible under the Act, except in a manner provided under the regulations. [Sec. 62].

### **Repayment of benefit improperly received**

Where a person has received a benefit or payment under the Act without being legally entitled to the same, he is liable to repay to the Corporation the value of the benefit or the amount of such payment. In case of the death of the person, his representative is liable to repay the same from the assets of the deceased in his hands. The value of the benefits other than cash payments is to be determined by an authority specified in the regulations. [Sec. 70].

### **Liability of owner or occupier of factories, etc. for excessive Sickness Benefit**

An owner or occupier of a factory or establishment is liable to pay to the Corporation an amount of extra expenditure incurred as sickness benefit (to be determined by an inquiring officer) if it is shown that incidence of sickness among insured persons is due to his default or neglect in observing statutory health regulations or maintaining sanitary working conditions. An owner of tenements

or lodgings occupied by insured persons is also liable to pay the amount for a similar default or neglect. [Sec. 69].

### **Employer not to reduce wages, etc.**

An employer is not authorised to directly or indirectly reduce the wages of an employee by reason only of his liability for any contribution payable under the Act. He is also not allowed to discontinue or reduce benefits payable to the employee under the conditions of his service even if the benefits are similar to those conferred by the Act, except in accordance with the regulations. [Sec. 72].

### **Employer not to dismiss or punish employee during period of sickness, etc.**

An employer is not allowed to dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit. Besides, except as provided under regulations, he is not authorised to inflict a similar punishment on an employee during the period he is in receipt of disablement benefit for a temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of pregnancy or confinement rendering the employee unfit for work. A notice of dismissal or discharge or reduction thus given to an employee during such a period is neither valid nor operative. [Sec. 73].

### **Enhancement of Benefits**

The Corporation may, at any time if its funds so permit, enhance the scale of any benefit admissible under the Act and also the period for which such benefit may be given. Besides, the Corporation may provide or contribute towards the cost of medical care of the families of insured persons. [Sec. 99].

## **ADMINISTRATION**

The administration of the scheme vests in the Employees' State Insurance Corporation appointed by the Central Government.

The Employees' State Insurance Corporation is a body corporate having perpetual succession and a common seal and the obligation to sue and be sued by that name [Sec. 3]. Besides, the Act also provides for the constitution of a Standing Committee of the Corporation, and a Medical Benefit Council.

### **Employees' State Insurance Corporation**

The Corporation consists of the following members:

- (a) a Chairman nominated by the Central Government;
- (b) a Vice-Chairman nominated by the Central Government;
- (c) not more than five persons nominated by the Central Government;
- (d) one person each representing each of the States in which the Act is in force nominated by the State Government concerned;
- (e) one person nominated by the Central Government to represent the Union Territories;
- (f) five persons representing employers nominated by the Central Government in consultation with employers' organisations recognised for the purpose by the Central Government;
- (g) five persons representing employees nominated by Central Government in consultation with employees' organisations recognised for the purpose by the Central Government;
- (h) two persons representing the medical profession nominated by the Central Government in consultation with organisations of medical practitioners recognised for the purpose by the Central Government;
- (i) three elected members of Parliament (two from Lok Sabha and one from Rajya Sabha).
- (j) the Director General of the Corporation (ex-officio). [Sec. 4].

The term of office of members of the Corporation except those referred to in clauses (a), (b), (c), (d), (e) and ex-officio member (j), is four years from the date of their nomination or election. An out-going member of the Corporation is eligible for re-nomination or re-election as the case may be. [Sec. 6].

**Officers and Staff of the Corporation**

The Central Government is empowered to appoint principal officers of the Corporation including (a) Director General of Employees' State Insurance, (b) Insurance Commissioner, (c) Medical Commissioner, (d) Chief Accounts Officer, and (e) Actuary. The Director General is the Chief Executive Officer of the Corporation [Sec. 16].

**Powers and duties of the Corporation**

As said earlier, the administration of the scheme vests in the Corporation. The Corporation has extensive powers to make regulations for the administration of its affairs and for carrying into effect the provisions of the Act [Sec. 97]. In addition to the scheme of benefits specified in the Act, the Corporation may also promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured. [Sec. 19]. As already said, the Corporation may also enhance the scale of any benefit admissible under the Act if its funds so permit. The Act also confers upon the Corporation wide powers in financial matters i.e. accepting grants, donations and gifts, holding property, raising loans, and making investments. [Secs. 26, 29]. The Corporation is empowered to appoint its officers and staff, other than the principal officers.

**Regional Boards, Committees, etc.**

The Corporation may appoint Regional Boards, Local Committees, and Regional and Local Medical Benefit Councils in areas specified under the regulations, and may also delegate to them, specified powers and functions. [Sec. 25]. Accordingly, Regional Boards, Local Committees and Local Medical Benefit Councils have been set up in different parts of the country.

**Supersession of the Corporation**

The Act empowers the Central Government to supersede the Corporation if, in its opinion, the Corporation persistently makes

default in performing its statutory duties or abuses its power. An order of supersession is to be made by notification in the official gazette. However, before issuing a notification superseding the Corporation, the Central Government is required to give a reasonable opportunity to the Corporation to show cause why it should not be superseded, and to consider the explanation or objections of the Corporation. All members of the Corporation are deemed to have vacated their offices from the date the notification is published. On superseding the Corporation, the Central Government is required to submit a report of action taken before the Parliament not later than 3 months from the date of the notification superseding the Corporation. [Sec. 21].

### **Employees' State Insurance Fund**

The Act provides for the creation of the Employees' State Insurance Fund consisting of contributions and grants, donations or gifts from the Central or State Government, local authority or any private body or individual. The Fund is to be held and administered by the Corporation. The account is to be operated by such officers as authorised by the Standing Committee with the approval of the Corporation. The Act specifies the following purposes for which the Fund may be expended:

- (i) payment of benefits and provision of medical treatment and attendance;
- (ii) payment of fees and allowances to members of the Corporation, Standing Committee, Medical Benefit Council, Regional Boards, Local Committees, and Regional and Local Medical Benefit Council;
- (iii) payment of salaries and allowances, gratuity, pensions, and contributions to provident or other benefit fund for the officers and staff of the Corporation;
- (iv) establishment and maintenance of hospitals, dispensaries or other institutions and provision of medical and other ancillary services;
- (v) payment of contributions to State Government, local authority or any private body or individual towards the cost of medical treatment or attendance;
- (vi) defraying the cost of auditing the accounts of the Cor-

- poration and the valuation of its assets and liabilities;**
- (vii) **defraying the cost of the Employees' Insurance Courts set up under the Act;**
- (viii) **payment of any sum under any contract entered into by the Corporation, the Standing Committee, or a duly authorised officer;**
- (ix) **payment of any sum under any decree, order or award of any Court or Tribunal against the Corporation or its officers or staff for any act done in the execution of duty or under a compromise or settlement of any suit or legal proceeding or claim instituted or made against the Corporation;**
- (x) **defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under the Act;**
- (xi) **defraying expenditure on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and**
- (xii) **such other purposes as may be authorised by the Corporation with the previous approval of the Central Government. [Secs. 26,28].**

### **The Standing Committee**

The Act also provides for the constitution of a Standing Committee of the Corporation consisting of the following members:

- (a) **a Chairman nominated by the Central Government;**
- (b) **three members of the Corporation nominated by the Central Government;**
- (c) **three members of the Corporation representing three State Governments specified from time to time by the Central Government;**
- (d) **the Director General of the Corporation (ex-officio);**
- (e) **eight members elected by the Corporation in the following manner:**
  - (i) **three members from among the members of the Corporation representing employers;**
  - (ii) **three members from among the members of the**

**Corporation representing employees;**

- (iii) one member from among the members of the Corporation representing the medical profession; and
- (iv) one member from among the members of the Corporation elected by Parliament. [Sec. 8].

The term of office of the elected members is two years from the date on which the election is notified. Nominated members remain in office during the pleasure of the Central Government. [Sec. 9].

The Standing Committee, subject to the general superintendence and control of the Corporation, administers the affairs of the Corporation and may exercise any of the powers and perform any of functions of the Corporation. It is, however, required to submit all cases and matters specified in the regulations for the consideration and decision of the Corporation. The Standing Committee may, in its discretion, submit any other matter for decision of the Corporation [Sec. 18]. The Standing Committee may be superseded in the same manner as the Corporation. [Sec. 21].

### **The Medical Benefit Council**

The Central Government is required to constitute a Medical Benefit Council consisting of the following members:

- (a) the Director General, Health Services as Chairman (ex-officio);
- (b) a Deputy Director General, Health Services, nominated by the Central Government;
- (c) the Medical Commissioner of the Corporation (ex-officio);
- (d) one member representing each of the States in which the Act is in force nominated by the State Government concerned;
- (e) three members representing employers nominated by the Central Government in consultation with such organisations of employers as recognised for the purpose by the Central Government;
- (f) three members representing employees nominated by the Central Government in consultation with such organisations of employees as recognised for the purpose by the Central Government; and

- (g) three members, (of whom not less than one must be a woman), representing the medical profession, nominated by the Central Government in consultation with such organisations of medical practitioners as recognised for the purpose by the Central Government.

The term of office of members other than those in clauses (a) to (d) above is four years from the date on which their nomination is notified. The Deputy Director General, Health Services, and members representing the State Governments hold office during the pleasure of the Government nominating them. [Sec. 10].

The duties of the Medical Benefit Council are the following :

- (a) to advise the Corporation and Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
- (b) to make investigation, in the prescribed manner, in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- (c) to perform such other duties in connection with medical treatment and attendance as specified in the regulations. [Sec. 22].

### **Adjudication of Disputes and Claims**

Disputes and claims under the Act are decided by the Employees' Insurance Courts constituted by the State Government. An appeal against an order of the Court lies in the High Court when it involves a substantial question of law. In other cases, the decision of the Employees' Insurance Court is final. The Court also decides cases against the decision of a Medical Appeal Tribunal (see section on Disablement Benefit). [Secs. 74-83].

### **Power to make Rules**

The Act empowers the Central Government (after consultation with the Corporation and subject to the condition of previous publication) to make rules for giving effect to the provisions of the Act. The State Government is also empowered to make

rules on specified matters which mostly pertain to the Employees' Insurance Court, provision of hospitals, dispensaries and other similar institutions, and scale of medical benefit to be provided. [Secs. 95-95].

## CHAPTER 24

### **SOCIAL SECURITY LEGISLATION IN INDIA (4) (PROVIDENT FUND LEGISLATION)**

In India, measures for the protection of workers against loss of income due to old age and invalidity were initially confined to the efforts of private employers. Later, some government undertakings attempted to solve the problem by providing schemes of provident fund, gratuity and pension on an *ad hoc* basis.

#### **The Provident Fund Act, 1925**

The first legislation relating to provident fund was the Provident Fund Act, 1925 enacted by the Central Government. The Act which applies to government departments, railway administration, local authorities and certain other services, provides for the creation of provident funds and lays down rules for the protection of compulsory deposits. The Act does not deal with provident funds in private industries.

#### **Proposal for Model Provident Fund Rules**

The question of compulsory provident funds came up for discussions before the Third Labour Ministers' Conference held in 1942, and it was agreed to prepare a set of model provident fund rules for circulation among the employers. Accordingly, a set of model rules was prepared and was placed before the Standing Labour Committee in 1944. The rules were subsequently circulated to the Provincial Governments, employers' and workers' organisa-

tions for information and adoption. However, no step was immediately taken to provide for provident fund schemes on a statutory basis.

### **The Coal Mines Provident Fund and Bonus Schemes Act, 1948**

In 1947, the Board of Conciliation appointed by the Government of India for the settlement of trade disputes in Bihar and West Bengal coal-fields recommended the establishment of a compulsory provident fund scheme for workers in coal mines. The question was discussed at the Industrial Committee on Coal Mining in 1948. The same year, the Government of India promulgated the Coal Mines Provident Fund and Bonus Schemes Ordinance authorising the Central Government to frame a provident fund and bonus scheme for coal miners. The Ordinance was subsequently replaced by the Coal Mines Provident Fund and Bonus Schemes Act, 1948.

### **The Employees' Provident Funds Act, 1952**

The question of compulsory provident fund scheme for industrial workers was discussed in the ninth session of the Indian Labour Conference in April, 1948. The subject was again discussed at the 12th meeting of the Standing Labour Committee in November, 1950 which unanimously recommended the introduction of a provident fund scheme for industrial workers. In 1951, the Labour Ministers' Conference also emphasized the urgency of enacting legislation for the purpose. Accordingly, the Government of India promulgated the Employees' Provident Funds Ordinance on the 15th November, 1951 providing for the institution of the compulsory provident funds for employees in factories and other industrial establishments. The Ordinance was replaced by an Act of the same name in 1952. The Act was amended in 1971 with a view to introducing the Employees' Family Pension Scheme.

The existing schemes of provident fund for industrial workers in the country are essentially based on the Coal Mines Provident Fund and Bonus Schemes Act, 1948 and the Employees' Provident Funds Act, 1952. The main provisions of the two Acts as amended are summarised below.

## THE COAL MINES PROVIDENT FUND AND BONUS SCHEMES ACT, 1948

The Coal Mines Provident Fund and Bonus Schemes Act, 1948 is intended "to make adequate provision for the future of labour employed in coal mines, to inculcate in them a habit of thrift and to stabilize the labour force in coal mining industry"<sup>1</sup> as well as to reduce absenteeism. Thus, the Act has three purposes in mind. Firstly, it is intended to develop in the coal miners the habit of thrift and saving so that they had something to fall back upon when they retire from work. Secondly, the employers' contributions matching the miners' contributions augment the amount available to workers at the time of retirement and thereby induce the miners to continue to work in the coal mines, thus ensuring a stable labour force. Thirdly, it was then noticed that the coal miners had a very high rate of absenteeism. In order that this rate be reduced, the availability of the benefit of the Provident Fund Scheme was linked to attendance. Earning attendance bonus was made a qualifying condition for the eligibility for the Provident Fund Scheme. The miner who succeeded in fulfilling the qualifying conditions for attendance bonus not only earned the bonus but also became eligible for the membership of the Provident Fund Scheme. When attendance rate improved, the Provident Fund Scheme was delinked from the Bonus Scheme.

The Act empowers the Central Government to frame a Provident Fund Scheme and a Bonus Scheme for employees in coal mines.

The Provident Fund Scheme framed under the Act may provide for all or any of the following matters:

1. The employees or class of employees who shall join the Fund, the contributions payable to the Fund and the conditions under which an employee may be exempted from joining the Fund or from payment of contributions.
2. Payment of contributions to the Fund by employers and by, or on behalf of, employees, the rate, time and manner

1. Govt. of India, *Indian Labour Year Book*, 1965, p. 292.

of such payment and the manner in which such contributions may be recovered.

3. The payment by the employer of such sums of money as may be considered necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made.
4. The Constitution of a Board of Trustees consisting of nominees of the Central Government and representatives of employers and employees nominated by the Central Government in consultation with the representative organisations concerned, subject to the condition that the number of representatives of the employees shall not be less than the number of representatives of employers, the number of Trustees and the terms and conditions under which they may be nominated, and the time, place and procedure of meetings of the Board.
5. The appointment of officers and servants of the Board and the opening of regional and other offices.
6. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund, the preparation of a budget, the audit of accounts, and the submission of reports to the Central Government.
7. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture that may be made and the maximum amount of such deduction or forfeiture.
8. The fixation of the rate of interest payable to members by the Central Government in consultation with the Board of Trustees.
9. The form in which an employee shall furnish particulars about himself and his family when required.
10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or change of such nomination.
11. The registers and records to be maintained by the employer and the returns to be furnished by him.
12. The form or design of an identity card or a token or a disc for the purposes of identifying any employee and for

the issue, custody and replacement thereof.

13. The fees to be levied for any of the purposes specified in this Schedule.
14. Any other matter which may be necessary or proper for the purpose of implementing the Coal Mines Provident Fund Scheme. (The First Schedule).

Matters to be provided for in the Coal Mines Bonus Scheme include the following:

1. The payment of bonus dependent on the attendance of an employee during any period.
2. The employees or class of employees who shall be eligible for the bonus and the conditions of eligibility.
3. The rate at which the bonus shall be payable to an employee and the manner in which the bonus shall be calculated.
4. The conditions under which an employee may be debarred from getting the bonus in whole or in part.
5. The rate at which sums shall be set apart by the employer for payment of bonus, and the time and manner of such payment.
6. The registers and records to be maintained by the employer and the returns to be furnished by him.
7. Any other matter which may be necessary or proper for the purpose of implementing the Coal Mines Bonus Scheme. (The Second Schedule).

The Coal Mines Provident Fund is deemed to be a recognised provident fund for the purposes of the Indian Income-tax Act, 1922. The amount of Provident Fund standing to the credit of any member in the Fund is not in any way capable of being assigned or charged and is not liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member. Besides, any amount standing to the credit of a member of the Provident Fund at the time of his death and payable to his nominee under the Coal Mines Provident Fund Scheme, subject to any deduction authorised by the Scheme, vests in the nominee and is free from any debt or other liability incurred by the deceased or by the nominee before the death of the member.

Any amount due from an employer in respect of any contri-

bution or bonus under any scheme framed under the Act may be recovered by the Government of India in the same manner as an arrear of land revenue. The amount due in respect of any contribution or bonus under a scheme framed under the Act or any charges in respect of administration of the scheme, where the liability has accrued before the person liable has been adjudicated insolvent or in the case of a company ordered to be wound up, is deemed, before the date of such order, to be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of a company being wound up, as the case may be.

In accordance with the provisions of the Act, the Government of India framed the Coal Mines Bonus Scheme in July, 1948 and the Coal Mines Provident Fund Scheme in December, 1948. Both the schemes are applicable to all coal mines in the country except those in Jammu & Kashmir.

#### THE COAL MINES PROVIDENT FUND SCHEME

The Coal Mines Provident Fund Scheme provides for most of the details specified in the First Schedule of the Act. Originally, the scheme covered coal miners drawing basic wages not exceeding Rs. 300 per month, but subsequently this wage limit was abolished. In 1951, the benefits of the scheme were extended to employees in organisations ancillary to coal mines. The scheme was further amended in 1965 so as to include persons employed by or through a contractor, malis, sweepers, domestic servants, teachers employed in or in connection with mines and apprentices and trainees who receive stipend or other remuneration directly from the employer. By another amendment, mine managers and supervisory staff drawing basic salary exceeding Rs. 300 per month, except those employed under the N.C.D.C., were also covered under the scheme. An amendment introduced in 1968 required all persons, except a few excluded categories, employed in or in connection with a coal mine, either directly or through contractors, to become members of the Fund on putting in the qualifying attendance.

#### Eligibility Conditions

Till 1960, earning of a bonus under the Coal Mines Bonus

Scheme by putting in a specified attendance in a quarter was necessary for becoming a member of the Fund. In 1961, the Provident Fund Scheme was delinked from the Bonus Scheme as a result of which an independent attendance qualification was adopted for the membership of the Fund.

For becoming eligible to membership of the Fund, a minimum of 105 days of attendance for underground workers and 130 days for surface workers during a period of 6 consecutive months is needed. With effect from January 1968, the qualifying attendance was reduced to 95 days for underground workers and 120 days for surface workers. An amendment of 1970 reduced it further to 48 and 60 days for underground and surface workers, respectively. Managers and supervisory staff drawing basic salary exceeding Rs. 300 per month are required to put in 75 days of attendance in a quarter to qualify for membership of the Fund.

### **Rate of Contribution**

The rate of compulsory contribution was originally 1/16th of the employee's basic wages and a similar amount by the employer. The rate has been revised from time to time. With effect from the 1st October, 1962, the employee is required to pay 8 per cent of the total emoluments and an equal amount is to be paid by the employer. In 1963, employees were also authorised to make voluntary contribution not exceeding the amount of their compulsory contribution, on an understanding that the voluntary contribution would not fetch any matching contribution from the employers. Contributions received in the Fund are invested in Central Government Securities.

### **Benefits**

The Scheme provides lump sum cash benefit to workers in the event of retirement after attaining the age of 50, retrenchment, permanent and total incapacity due to bodily or mental infirmity, migration for permanent settlement abroad, and termination of service for any other reason. Full refund of the member's own contribution with the employer's contribution and interest is made in case of retirement, retrenchment and permanent incapacity.

In the event of the death of a member, nominees or heirs of the deceased get full refund. The Scheme imposes certain restrictions on the withdrawals on termination of service for other reasons before the member attains 50 years of age. The extent of restrictions varies with the period of service put in; the longer the period of membership, the less is the forfeiture.

#### THE COAL MINES BONUS SCHEME

The Coal Mines Bonus Scheme is intended to provide "an incentive to workers to be more regular in attendance and to avoid taking part in illegal strikes."<sup>2</sup> The scheme covers all employees in coal mines whose monthly earnings do not exceed Rs. 730, but excludes sweepers, malis, domestic servants, employees of a contractor engaged in building work, brick or tile making or persons employed under N.C.D.C., and persons whose conditions of service are similar to those in railway establishments or which entitle them to pension under Civil Rules.

The Scheme entitles monthly-rated employees to a bonus equivalent to one-third of their basic earnings of each quarter. The amount of bonus is to be paid within two months of the expiry of the quarter. Employees participating in an illegal strike in a particular quarter were not originally entitled to bonus in respect of that quarter. The entire period of lay-off is treated as attendance for the purpose of payment of bonus. The basic wage paid to an employee for paid holidays and leave with wages also count towards basic earnings for the purpose of calculating the amount of bonus. An amendment introduced in 1965 provides for crediting unclaimed bonus for six months from the end of a quarter or that recovered by the Central Government after the 1st May, 1965, to the Reserve Account. A person may claim the arrears of bonus credited to the Reserve Account within a period of three years from the last date of the quarter concerned. In case the claimant dies before the payment of refund of unclaimed bonus, the same is to be paid to his nominee.

The Act was again amended in 1967 with a view to giving effect to certain recommendations made by the Central Wage Board

2. The Second objective i.e. to avoid taking part in an illegal strike was done away with by an amendment introduced in 1963.

for the Coal Mining Industry. The amendments introduced in 1967 deleted the existing provision relating to forfeiture of bonus for participation in an illegal strike; provided for bonus at 10 per cent of the new consolidated basic wage as against the old rate of 33½ per cent of basic earnings of the employee; and enhanced the wage limit for entitlement of bonus from Rs. 300 to Rs. 730 per month.

An idea of the categories of workers entitled to bonus in different States and the qualifying period of attendance in a quarter for earning bonus may be had from Table 36.

### THE EMPLOYEES' PROVIDENT FUNDS ACT, 1952

The Employees' Provident Funds Act, 1952 aims at instituting compulsory provident funds for employees in factories and other establishments with a view to making some provision for the future of industrial workers after their retirement and for their dependants in the event of death. An amendment of 1971, provided for the introduction of the Employees' Family Pension Scheme and suitably changed the title of the Act.

#### Scope

The Act extends to the whole of India except the State of Jammu & Kashmir. Originally, the Act covered factory establishments employing 20 or more persons only in six specified industries namely, (a) cement, (b) cigarettes, (c) electrical, mechanical or general engineering products, (d) iron and steel, (e) paper and (f) textiles (cotton, silk and jute). The Central Government was, however, empowered to extend the provisions of the Act to any establishment employing 20 or more persons, and in some cases also to those employing less than 20 persons. The Central Government has applied the provisions of the Act to a number of factory and non-factory establishments in various industries. Presently, the Act applies to factories and other establishments in over 125 industries and employing 20 or more persons (on completion of 5 years of existence if employing less than 50 employees and on completion of 3 years of existence if employing 50 or more persons). Once an establishment is covered under the Act, it continues to be so covered despite a decline below 20, except in case where the number is reduced to 15 during a continuous period of one year.

TABLE-36

**Categories of Workers Entitled to Bonus, and Qualifying Conditions under the Coal Mines Bonus Scheme**

<i>State</i>	<i>Categories of workers</i>	<i>Qualifying attendance</i>
1. Bihar and West Bengal	(i) Underground miners and piece-rated workers (under-ground)	54 days in a quarter
	(ii) Other workers	66 days in a quarter
2. Madhya Pradesh, Maharashtra and Orissa	(i) Underground miners and other underground piece-rated workers	60 days in a quarter
	(ii) Other workers	65 days in a quarter
3. Assam	(i) Daily-rated underground miners or other underground piece-rated workers	4 days in a week
	(ii) Other daily-rated employees	5 days in a week
	(iii) Monthly-rated employees	Not less than 66 days in a quarter
4. Andhra Pradesh	(i) Certain categories of workers e.g. coal cutters, fitters and drilling and dressing teams with electric and compressed-air drills	52 days in a quarter
	(ii) Underground miners or other underground piece-rated workers	60 days in a quarter
	(iii) Other workers	65 days in a quarter

*Source:* Govt. of India, *Indian Labour Year Book*, 1970, p 243.

The Act does not apply to an establishment registered under the Co-operative Societies Act, 1912 or under any law in any State relating to co-operative societies and employing less than 50 persons and working without the aid of power.

### Power to Exempt

The Central Government is empowered to exempt any class of establishments from the operation of the Act for a temporary period, if financial or other considerations so demand.

The 'appropriate government'<sup>3</sup> is empowered to exempt any establishment from the provisions of the Act if its employees are in receipt of benefits (in the nature of provident fund, pension or gratuity) which are not less favourable than those provided under the Act or any Scheme in relation to the employees in any other establishment of a similar character. However, no exemption is to be granted in respect of a class of persons unless the appropriate government is of the opinion that the majority of persons constituting that class desire to continue to be entitled to such benefits.

The Act imposes certain obligations on the employer in case an establishment is exempted from the operation of the Scheme. These are as follows:

- (a) to maintain accounts, submit returns, make required investment, provide for facilities for inspection, and pay inspection charges in relation to the provident fund, pension and gratuity to which the exempted employees are entitled;
- (b) not to reduce the total quantum of benefits in the nature of pension, gratuity or provident fund without the leave of the Central Government; and
- (c) in the event of an employee's leaving employment and

3. For the purposes of the Act, "Appropriate Government" means: (i) in relation to an establishment belonging to, or under the control of Central Government or in relation to an establishment connected with railway company, a major port, a mine or an oil field or a controlled industry or in relation to an establishment having departments or branches in more than one State, the Central Government, and (ii) in relation to any other establishment, the State Government.

obtaining re-employment in another establishment, to transfer the amount of accumulations to the credit of the employee to the provident fund of the establishment where he is re-employed or to the Fund established under the Act, as the case may be.

An exemption granted to an establishment may be cancelled if the employer fails to comply with his statutory obligations. In case an exemption granted is cancelled, the amount of accumulations to the credit of every employee is to be transferred to his account in the Fund.

### **Framing of Employees' Provident Funds Scheme**

The Act empowers the Central Government to frame the Employees' Provident Funds Scheme for the establishment of provident funds for employees covered under the Act. A Provident Funds Scheme was accordingly framed and put into operation.

### **Rate of Contribution**

The employer's contribution to the Fund is  $6\frac{1}{4}$  per cent of the basic wages, dearness allowance (including cash value of food concessions allowed to the employee), and retaining allowance. The employee's contribution is equal to the contribution payable by the employer in respect of him. If an employee so desires, he may contribute up to  $8\frac{1}{2}$  per cent of his basic wages, dearness allowance and retaining allowance, but the employer's contribution remains restricted to  $6\frac{1}{4}$  per cent. The statutory rate of contribution may be raised from  $6\frac{1}{4}$  per cent to 8 per cent in any establishment considered fit for the purpose by the Central Government. [Sec. 6]. So far, the enhanced rate of 8 per cent has been applied to about 90 industries.

### **Protection Against Attachment**

The amount standing to the credit of any member of the Fund or of any exempted employee in a provident fund is not in any way capable of being assigned or charged and is not liable to attachment under any decree or order of any Court in respect of

any debt or liability incurred by the member or the exempted employee. In case a member or an exempted employee dies, the amount standing to his credit vests in the nominee and is free from any debt or other liability incurred by the deceased or the nominee before his death. [Sec. 10].

### **Priority of Payment of Contribution over other Debts**

In the event of the insolvency of an employer or winding up of a company, the amount due from the employer in respect of any contribution is deemed to be included among the debts if the liability has accrued before the order of adjudication or the winding up. The amount thus due has to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up. [Sec. 11].

### **Recovery of money due from Employers**

Any arrear amount due from the employer in respect of contributions payable to the Fund, recoverable damages, accumulations required to be transferred or any charges payable by him under the Act is recoverable in the same manner as an arrear of land revenue. [Sec. 8].

### **Employer not to reduce wages, etc.**

No employer can, by reason of his liability for payment of any contribution to the Fund or any charges under the Act or the Scheme, directly or indirectly reduce the wages of an employee or the total amount of benefits (in the nature of old age pension, gratuity or provident fund) to which he is entitled under the terms of his employment. [Sec. 12].

### **Special Provisions relating to Existing Provident Funds**

Every employee subscribing to any provident fund of an establishment covered under the Act continues to be entitled to its benefits accruing to him pending the application of the Scheme established under the Act. On the application of the Scheme to

the establishment, the accumulations in the existing provident fund standing to the credit of the employee are to be transferred to the Fund established under the Scheme. [Sec. 15].

### **Inspectors**

The Act empowers the appropriate government (Central and State Governments in their respective jurisdictions) to appoint Inspectors to secure proper enforcement of the Act.

### **SALIENT FEATURES OF THE EMPLOYEES' PROVIDENT FUNDS SCHEME**

In pursuance of the provisions of the Act, the Central Government framed the Employees' Provident Funds Scheme in 1952. The Scheme has been modified from time to time. The salient features of the Scheme are given below.

### **Applicability**

The Scheme presently covers employees whose total emoluments (including dearness allowance and cash value of food concessions) do not exceed Rs. 1,000 per month. An employee who has completed one year of continuous service or has actually worked for 240 days during a period of 12 months is eligible for the benefits under the Scheme. An employee who has actually worked for 240 days in a period of less than a year is also eligible to join the Fund.

An employee in a seasonal establishment is eligible for the benefits if he has worked for two-thirds of the period during which the establishment remains in operation. Contract labour employed by or through a contractor in connection with the work of an establishment is covered under the Scheme. A person who had been totally incapacitated for work in a particular establishment and had withdrawn his accumulations is again eligible to become a member of the Fund on subsequent employment in an establishment covered under the Act.

## Contributions

As said earlier, the Act requires the employee to contribute  $6\frac{1}{2}$  per cent of his basic wages, dearness allowance, cash value of food concessions and retaining allowance payable to him. An equal amount is contributed by the employer. The statutory rate of contribution has been raised to 8 per cent in many establishments. In addition to contributions, the employers are also required to pay administrative charges fixed by the Central Government towards the expenses of the administration of the Fund.

The aggregate amount received in the form of employers' and workers' contributions is credited to the "Provident Funds Account." A "Central Administration Account" is maintained for recording all administrative expenses of the Fund and authorised administrative charges. Besides, all interest, rent, and other income realised and net profits or loss from the sale of investment (not including the transactions of the Administration Account) are credited or debited to a separate account called "Interest Suspense Account."

Employers are required to maintain a contribution card in respect of each of the employees. All contributions made by the employee are to be recorded in the card which can be seen by the employee or inspected by the Employees' Provident Fund Commissioner or an officer authorised by him. The office of the Fund is also required to maintain an account in respect of each member in which necessary entry of all contributions made by him or his employer is to be made. Members are entitled to interest on the amount standing to their credit.

## Withdrawals

A member of the Fund is authorised to withdraw the full amount standing to his credit (including employer's share of contribution) in the event of retirement after superannuation (on attaining the age of 55) or on account of total and permanent incapacity. Full accumulations may also be withdrawn if a worker (a) migrates from India for permanent settlement abroad, or (b) is retrenched or (c) completes 15 years of membership or (d) is suffering from Leprosy or T.B. or is physically or mentally incapacitated

to work.

A worker is entitled to : (a) 85 per cent of employer's contribution where his period of membership is 10 years or more but less than 15 years, (b) 75 per cent where it is 5 years or more but less than 10 years, (c) 50 per cent where it is 3 years or more but less than 5 years, and (d) 25 per cent for less than 3 years' membership. He is always entitled to his share of contribution in full.

A member may also be permitted to withdraw his own share of contribution together with a proportionate amount of employer's share if (a) he being a national of a foreign country is leaving India for at least a year, or (b) he has not been employed in any establishment covered under the Act for a continuous period of not less than 6 months immediately preceding the date on which he applies for withdrawal.

In the event of the death of a member, the full amount standing to his credit is to be paid to his nominee. In case there is no nominee, the amount is to be paid to his family members in equal shares. If the deceased does not leave behind any nominee or family members, the amount standing to his credit is to be paid to the person legally entitled to it. A Death Relief Fund has also been set up for giving financial assistance to the nominees or heirs of the deceased members.

### **Advances and Loans**

The kinds of non-refundable advances provided under the Scheme are listed below:

- (1) A worker can get advance for payment of premia of Life Insurance Policy if he has been a member of the Fund for three years;
- (2) A worker is entitled to an advance for constructing a house or purchasing a house or a plot of land for a house, if he has remained a member for ten years and has contributed at least Rs. 1000 as his share. He is also entitled to an advance for purchasing a tenement cons-

trusted by any co-operative society or by the State Government or for constructing a house under 'Low Income Housing Scheme'. Only one kind of advance can be made for the purpose;

- (3) Advance for purchasing shares of a consumers' co-operative society;
- (4) A worker can get an advance up to his own share of contributions if the establishment is locked up or closed for more than 30 days. In case of mass retrenchment, payment is made immediately, but in case of individual retrenchment, payment is made if the member has not been employed in an establishment covered under the Act for a continuous period of at least six months;
- (5) A member is also entitled to an advance for the purposes of hospitalisation lasting for one month or more or major surgical operation in a hospital of T.B., leprosy, paralysis, cancer, asthma, for the treatment of which leave has been granted by the employer.

### Administration

The administration of the Fund vests in the Central Board of Trustees appointed by the Central Government. The Central Board consists of : (a) a Chairman nominated by the Central Government, (b) three other nominees of the Central Government, (c) nominees of State Governments, (d) six representatives of employers, and (e) six representatives of workers. The Scheme also provides for the establishment of State Boards of Trustees. A State Board consists of : (a) a Chairman nominated by the Central Government (in consultation with the State Government), (b) two persons nominated by the State Government, (c) four persons representing employers, and (d) four persons representing workmen. Where a State Board is constituted, the amount of the Fund in respect of all the employees in the State is to vest in and administered by it.

Pending the constitution of a Board of Trustees in a State, the Central Government is required to appoint a Regional Committee which is to function under the control of the Central Board

A Regional Committee consists of : (a) a Chairman nominated by the Central Government, (b) two persons nominated by the Central Government on the recommendation of the State Government, (c) three persons representing employers, and (d) three persons representing workmen. The Regional Committee gives advice and assistance to the Central Board.

The Chief Executive Officer of the Central Board is the Central Provident Fund Commissioner who is appointed by the Central Government. He is assisted by Regional Provident Fund Commissioners. In most States, full-time Regional Commissioners have been appointed while in others, State Labour Commissioners also function as part-time Regional Commissioners. The Regional Commissioners are assisted by Accounts Officers and Provident Fund Inspectors.

#### THE EMPLOYEES' FAMILY PENSION SCHEME

The Employees' Provident Funds Act, 1952 was amended in 1971 with a view to introducing the Employees' Pension Scheme. The Scheme, which came into force in March, 1971, provides for a "substantial long term protection" to the family of the worker in the event of his premature death while in service. The Scheme applies compulsorily to all the members of the Employees' Provident Funds Scheme and other exempted Provident Funds. The Family Pension Fund is constituted by the transfer of a portion of the employees' share of Provident Fund representing  $1\frac{1}{8}$  per cent of his pay with an equal amount out of the employer's share. The Central Government contributes  $1\frac{1}{8}$  per cent of the pay of the member and also bears the expenditure on administration. The benefits provided by the Scheme are : (a) family pension, (b) retirement benefit, (c) life assurance benefits and (d) withdrawal benefits.

## **CHAPTER 25**

### **WELFARE FUND LEGISLATION IN INDIA**

With the growing realisation that the conditions under which the industrial workers work and live have to be materially improved in order to promote their welfare, the State has become an active agent in initiating measures in this direction. The motives behind the efforts for the promotion of labour welfare have been varied; efficiency, ethical and humanitarian considerations have played their roles in this sphere. The State, through various labour legislations, has not only forced the employers to adopt measures for the promotion of labour welfare, but has also undertaken administrative and legislative measures from time to time to directly concern itself with labour welfare. In India, even before the enactment of the Factories Act, 1948, which provided for the first time in the factory legislation a chapter on welfare, the Government of India had set up by law a 'welfare fund' for the welfare of the coal miners. That was the beginning of the process of the setting up of welfare funds in India. Subsequently, the Government of India set up 'welfare funds' in a few other industries also. The States followed suit and took similar steps for setting up welfare funds in their respective jurisdictions. Under the central sphere there are three welfare fund laws namely, (a) the Coal Mines Labour Welfare Fund Act, 1947, (b) the Mica Mines Labour Welfare Fund Act, 1946 and (c) the Iron Ore Mines Labour Welfare Cess Act, 1961. Under the State jurisdictions, there are: the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950; the Bombay

Labour Welfare Fund Act, 1953; the Assam Tea Plantations Employees' Welfare Fund Act, 1959; the Mysore Labour Welfare Fund Act, 1965; and the Punjab Labour Welfare Fund Act, 1965.

#### THE COAL MINES LABOUR WELFARE FUND ACT, 1947

The immediate pressure for the establishment of a welfare fund for the coal miners was the shortage of labour and increasing absenteeism that characterised the supply of labour in the coal mines during the Second World War. The war created an unprecedented expansion in the demand for coal, but as employment in other industries was also expanding, adequate labour supply was not available in the coal mining industry to mine the coal that was urgently needed. Investigations had indicated that the working and living conditions in the coal mines were so bad as to repel the workers from taking up coal mining. It was felt that, if working and living conditions could be improved, labour would be attracted to coal mining and absenteeism reduced.

Therefore, the Coal Mines Labour Welfare Fund Ordinance was issued in 1944. The Ordinance provided for the constitution of a Coal Mines Labour Welfare Fund from the levy of an excise duty per ton of coal and coke despatched from collieries. The proceeds of the Fund were to be earmarked exclusively for promoting the welfare of labour employed in the coal mining industry. The Fund established under the Ordinance was mainly used for providing housing and medical facilities to the coal miners. In 1947, the Ordinance was replaced by an Act of the same name. The main provisions of the Coal Mines Labour Welfare Fund Act, 1947 are summarised below.

#### Object

The main object of the Act is to establish a fund called the Coal Mines Housing and General Welfare Fund with a view to providing housing, medical and other welfare facilities to the coal miners.

#### Finances

The Fund is financed by a levy of cess on all coal and

coke despatched from collieries at a rate fixed by the Central Government, subject to the minimum of 25 paise and a maximum of 50 paise per ton. During 1970-71, the rate of cess on despatch of coal or coke was 49.21 paise per ton. The proceeds of the duty are to be apportioned into (a) housing account, and (b) general welfare account of the Fund. Till 1967, the proceeds were distributed equally among the two accounts of the Fund. In 1970-71, the ratio of the fund to be apportioned in the housing and general welfare account was 5 : 7. Besides, any grants made by the Central Government in respect of housing, rents realised from the housing accommodation provided by the Fund, and any other amount received by the Housing Board are also credited to the housing account.

### **Housing Account of the Fund**

The amount in the housing account of the Fund is to be applied to defray: (a) the cost of erecting, maintaining and repairing housing accommodation for the coal miners and of providing connected services; (b) the cost of preparing schemes of housing and acquiring land; (c) grant to State Government, local authorities or employers in aid of any housing scheme approved by the Housing Board; (d) allowance of the members of the Housing Board; and (e) any other expenditure as directed by the Central Government.

By the end of 1970, as many as 2,153 houses were constructed under the maiden Township Scheme of the Fund. Besides, 1,638 houses were constructed by colliery owners under the Subsidised Housing Scheme of the Fund, and 2,810 houses under the Subsidy-cum-Loan Scheme. At the end of 1970, as many as 40,289 houses were constructed under the New Housing Scheme. A scheme for the construction of one lakh houses costing Rs. 1,600 each under the Low Cost Housing Scheme is also in operation. By the end of 1970, 17,375 houses and 142 barracks were constructed under this scheme. Besides, a new scheme called "Build Your Own House" has also been introduced by the Fund.

### **General Welfare Account of the Fund**

The amount in the general welfare account of the Fund is to

be utilised to defray the following:

- (1) the cost of measures for the coal miners directed towards—
  - (a) Improvement of public health and sanitation, prevention of disease, provision of medical facilities and improvement of existing medical facilities including provision and maintenance of dispensary services;
  - (b) provision of water supply, facilities for washing and improvement of existing supplies and facilities;
  - (c) provision and improvement of educational facilities;
  - (d) improvement of standards of living, including nutrition, amelioration of social conditions and provisions of recreation facilities; and
  - (e) provision of transport to and from work;
- (2) grant to State Governments, local authorities or colliery owners in aid of any scheme approved by the Central Government for any purposes for which the amount in the general welfare account may be utilised;
- (3) the allowances of the members of the Advisory Committee and salaries and allowances of other personnel of the Fund, and other administrative expenses; and
- (4) any other expenditure as directed by the Central Government.

The Central Government may also direct payment of grants-in-aid to such colliery owners who maintain dispensary services of the prescribed standard.

The cost of administering the Fund and the salaries and allowances of the personnel appointed to carry out the measures financed from the Fund is to be defrayed out of the Fund and apportioned between the housing and general welfare accounts in the prescribed manner.

A major portion of the expenditure from the "General Welfare Account" is incurred in providing medical facilities to coal-miners. The Fund has established Central Hospitals at Dhanbad and Asansol. Steps have also been taken to establish more Central Hospitals. The Central Hospitals are well-equipped and provide facilities for specialised treatment in surgery, and in eye, ear, nose, throat, dental and venereal diseases. Besides, a number

of Regional Hospitals are also functioning in various coal-producing regions.

Particular attention has been given to the treatment of T.B. patients. A T.B. Clinic is functioning at Katras. One T.B. wing has been attached to each of the Central Hospitals at Dhanbad and Asansol. In addition, a number of beds have been reserved in various sanatoria for the treatment of coal-miners suffering from T.B.

The Fund also runs allopathic and ayurvedic dispensaries, Health Promotion Centres and a Leprosy Hospital. Arrangements have been made with the authorities of the Mental Hospitals at Ranchi and Nagpur for the treatment of coal-miners suffering from mental diseases. Several Family Planning Centres have also been opened. Anti-malaria operations are also carried out in the coal mines.

A number of Miners' Institutes are functioning for promoting general welfare activities for the benefit of the coal miners. These Institutes are designed to provide recreation facilities to workers and their families, to impart education to children and adults and to train women in crafts. Several Adult Education Centres have also been established. Besides, provision has been made for Feeder Adult Education Centres and Women's Welfare-cum-Children's Education Centres.

The organisation has also given considerable attention to intensifying the establishment of co-operative societies in the coal-fields. Liberal grants are made both for the establishment and running of these societies. Other general welfare activities of the Fund comprise: provision of pit-head baths and creches, water supply, financial assistance to dependants of workers suffering from T.B., assistance to wives and school-going children of workers involved in fatal accidents, provision of holiday homes, payment of scholarships and tuition fees for the children of colliery workers, and provision of rehabilitation centres for disabled workers.

### **Administration**

The Fund is administered by the Central Government in consultation with an Advisory Committee. The Advisory Committee, which has been constituted by the Central Government, consists of

an equal number of members representing government, colliery owners and coal miners. The executive head of the organisation is an officer appointed by the Government of India and his designation is Coal Mines Labour Welfare Commissioner. He is assisted by Deputy Commissioners, Inspectors and other technical and general personnel. In pursuance of the statutory requirements, a Coal Mines Labour Housing Board has been constituted and the Coal Mines Labour Welfare Commissioner is also the Chairman of the Board.

#### THE MICA MINES LABOUR WELFARE FUND ACT, 1946

The Mica Mines Labour Welfare Fund Act, 1946 aims at "improving the living and working conditions of labour employed in the Mica Mining Industry." The Act provides for the setting up of a Mica Mines Labour Welfare Fund for the welfare of the mica miners.

#### The Mica Mines Labour Welfare Fund

The Mica Mines Labour Welfare Fund is raised from the levy of *ad valorem* (according to value) customs duty on all mica exported from India up to a maximum of 6½ per cent. The proceeds of the duty thus recovered are to be paid to the credit of the Fund. The rate of cess levied during 1970 was 2½ per cent *ad valorem*.

The amount of the Fund may be utilised for the following purposes:

- (1) to defray the cost of measures for the benefit of labour employed in the mica mining industry directed towards—
  - (a) improvement of public health and sanitation, prevention of disease, provision and improvement of medical facilities;
  - (b) provision and improvement of water supply and facilities for washing;
  - (c) provision and improvement of educational facilities;
  - (d) improvement of standards of living including housing and nutrition, the amelioration of social conditions and provision of recreational facilities;

- (e) provision of transport to and from work;
- (2) to give grant to State Governments, local authorities or mica mine owners in aid of any scheme approved by the Central Government for any of the purposes for which the Fund may be utilised;
- (3) to meet the cost of administering the Fund; and
- (4) to incur any other expenditure as directed by the Central Government.

Housing schemes financed from the Fund are of three kinds namely, Low Cost Housing Scheme; Departmental Colonies; and 'Build Your Own House Scheme.' Under the Low Cost Housing Scheme, 500 houses costing about Rs. 1,600 each are to be constructed in Bihar. These houses are to be handed over to mine owners who are required to pay a nominal rent to the Fund and to allot the same to miners free of rent. Several houses have been constructed in the Departmental Colonies—and others are in various phases of construction. These houses are also to be let out to the mica miners free of rent through mine owners who are required to pay a nominal rent to the Fund. The 'Build Your Own House Scheme' envisages Financial assistance in the form of cash or building materials to the mica miners to the extent of Rs. 400 for the purpose of improving their village houses.

The medical facilities provided to the mica miners and their families during 1970-71 included: a Central Hospital at Karma (Bihar), a Regional Hospital and T.B. Clinic at Tisri (Bihar), a T.B. Hospital at Karma (Bihar), a Base Hospital at Kalichedu (Andhra Pradesh), and a Central Hospital at Gangapur (Rajasthan). In addition, provision has also been made for dispensaries, mobile medical units, maternity and child welfare centres, and ayurvedic dispensaries. Besides, arrangements have also been made with the T.B. Hospital, Nellore and Birla T.B. Sanatoria, Ranchi, for reservation of beds for the use of mica miners and their family members.

A few Multipurpose Institutes each with an Adult Education Centre and Women's Welfare Centre have been established in Bihar. There are also a few Women's Welfare Centres in A.P. and Rajasthan. One Community Centre is functioning in Andhra Pradesh where workers learn carpentry in leisure time. In order

to provide educational facilities for the miners' children, several primary schools, middle and high schools and feeder centres have been established. Provision has also been made for awarding scholarships to children of mica miners studying in schools and colleges.

The Multipurpose, Community and Feeder Centres provide recreation facilities. Besides, provision for mobile cinema units and radio sets has also been made. Other activities financed from the Fund comprise: provision of water supply, financial assistance to the widows and children of mica miners who die as a result of accidents, and establishment of co-operative stores.

### Administration

The Fund is administered by the Central Government in consultation with Advisory Committees. The members of Advisory Committees are appointed by the Central Government. The Act provides for the inclusion of an equal number of representatives of mica mine owners and mica miners in each of the Committees. At least one member of each of the Committees is to be woman, and at least one, a member of the legislature of the State concerned. Advisory Committees have so far been set up in Bihar, Andhra Pradesh and Rajasthan. These Committees are headed by the Labour Ministers of the States concerned. There is a Central Advisory Board to review and coordinate the activities of these Advisory Committees.

### THE IRON ORE MINES LABOUR WELFARE CESS ACT, 1961

A Welfare Fund for the iron ore miners has also been established by the Iron Ore Mines Labour Welfare Cess Act, 1961. The Act, which is patterned after the Coal Mines Labour Welfare Fund and Mica Mines Labour Welfare Fund Acts, provides for the establishment of a Welfare Fund for financing the activities intended to promote the welfare of workers engaged in iron ore mines.

The income of the Fund is derived from a levy of cess not exceeding 50 paise per metric ton on all iron ore produced at any mine. During 1970, the rate of levy was 25 paise per metric ton.

The amount thus collected is to be utilised (after defraying the cost of collection) to meet the expenditure on measures for promoting the welfare of iron ore miners. The activities for which the proceeds of the cess are to be utilised comprise: (a) improvement of public health and sanitation ; (b) prevention of disease and the provision and improvement of medical facilities, water supply and washing facilities ; (c) provision and improvement of educational facilities; (d) improvement of standard of living including housing and nutrition ; (e) amelioration of social conditions ; (f) provision of recreational facilities; and (g) provision of transport to and from the place of work. The Central Government may exempt or modify the enforcement of the provisions of the Act in respect of iron ore mines in any State where adequate provision for financing the welfare activities for iron ore miners is in existence.

The Act empowers the Central Government to constitute Tripartite Advisory Committees, not exceeding one for each of the principal iron ore producing States, to advise on matters arising out of the administration of the Act. The Chairmen of the Committees are appointed by the Central Government. Advisory Committees have so far been set up for Bihar, Orissa, Madhya Pradesh, Maharashtra, Andhra Pradesh and Mysore. A Central Advisory Board has also been set up at the Centre to review and co-ordinate the activities of the Advisory Committees and to consider any other matter relevant to the welfare of the iron ore mine workers.

#### **THE STATE LABOUR WELFARE FUND ACTS**

Labour Welfare Fund Acts have also been enacted in the States of U.P., Maharashtra, Gujarat, Assam, Mysore and Punjab.

#### **The U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950**

The U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950 provides for the constitution of a Welfare Fund for promoting the welfare of labour employed in sugar and power alcohol industries in the State. The income of

the Fund is derived mainly from the sum which the government acquires by realising from the sugar factories, the difference between the sale price of molasses fixed by the government for purposes of supply to power alcohol factories and open sale price of molasses sold for other purposes. The Fund has three separate accounts namely, (a) Housing Account, (b) General Welfare Account, and (c) Development Account. A major portion of the Fund is credited to its Housing Account.

The Act provides for the constitution of a tripartite Advisory Committee to advise the government on the administration of the Act. A Housing Board has been constituted exclusively for the administration of the Housing Account of the Fund. The Labour Commissioner has been appointed as the Labour Welfare Commissioner under the Act. He is also the Chairman of the Housing Board. A separate Act known as the U P. Labour Welfare Fund Act, 1965 is in operation in respect of factories, plantations and other establishments.

### **The Bombay Labour Welfare Fund Act, 1953**

The Bombay Labour Welfare Fund Act, 1953 applies to factories, tramways, motor or omnibus services, and other establishments engaged in any business or trade and employing 50 or more persons. The Act provides for the constitution of a Fund for financing labour welfare activities in the State. The Fund consists among other things, of all unpaid accumulations with the employers and voluntary donations.

The welfare measures on which the income of the Fund is to be utilised comprise : (a) community and social education centres including reading rooms and libraries; (b) community necessities; (c) holiday homes; (d) entertainment and other forms of recreation; (e) home industries and subsidiary occupations for women and unemployed persons; (f) activities of a social nature; and (g) other activities designed to improve the standard of living and social conditions of labour.

The administration of the Fund vests in the Bombay Labour Welfare Board consisting of independent persons, and representatives of employers and employees. The Welfare Commissioner is the chief executive officer of the Board. The State Government

has also appointed Inspectors for the enforcement of the Act. Following the bifurcation of the State, a similar Fund has been established in Gujarat.

### **The Assam Tea Plantations Employees' Welfare Fund Act, 1959**

The Assam Tea Plantation Employees' Welfare Fund Act, 1959 applies to tea plantations including all the estates registered under the Tea Act, 1953 in the State of Assam.

The Act provides for the constitution of Assam Tea Plantations Employees' Welfare Fund, the income of which is derived from : (a) all fines realised from the employees in the course of the management of plantation, (b) all unpaid accumulations, (c) all grants from the State or Central Government or the Tea Board, (d) any voluntary donations, and (e) any sum unclaimed or forfeited in the Provident Fund Account of the employees.

The Fund is to be applied to meet expenditure on measures necessary for promoting the welfare of employees employed in plantations in Assam including: (a) adult education and literacy drive; (b) community and social education centres; (c) community necessities, games and sports; (d) excursions, tours and holiday homes; (e) entertainment and other forms of recreation; (f) home industries and subsidiary occupations for women and unemployed persons ; (g) corporate activities of a social nature; (h) cost of administering the Act, and (i) other objects intended to improve the standard of living and to ameliorate the social conditions of employees.

The Fund vests in and is held and applied by a Board of Trustees consisting of independent persons, and representatives of employers and employees. The Welfare Commissioner is the chief executive officer of the Board. The Act also provides for the appointment of Inspectors for the administration of the Act.

### **The Mysore Labour Welfare Fund Act, 1965**

The Mysore Labour Welfare Fund Act, 1965 applies to all employers employing one or more persons and includes a factory, a motor omnibus service, and any establishment (including a society or trust which carries on any business or trade and which employs

on any working day during the last twelve months more than 50 persons).

The Act provides for the establishment of Mysore Labour Welfare Fund which is to consist among others of all unpaid accumulations, all fines realised from employees, any voluntary donations and any fund transferred or borrowed.

The income of the Fund is to be utilised to defray expenditure on measures intended to promote the welfare of labour and their dependants including: (a) community and social education centres; (b) community necessities; (c) games and sports; (d) excursions, tours and holiday homes; (e) entertainment and other forms of recreation; (f) home industries and subsidiary occupations for women and unemployed persons; (g) corporate activities of a social nature; (h) cost of administering the Act; and (i) other objects intended to improve the standard of living and to ameliorate the social conditions of labour.

The Fund is to vest in and be held and applied by the Mysore Labour Welfare Board consisting of independent persons, and representatives of employers and employees. The Welfare Commissioner is the principal executive officer of the Board. The State Government is empowered to appoint Inspectors to inspect records in connection with the sums payable into the Fund and to discharge other duties.

### **The Punjab Labour Welfare Fund Act, 1965**

The Punjab Labour Welfare Fund Act, 1965 is similar to the Mysore Act in all the essential details.

An analysis of these State legislations indicates that they rely on fines and unpaid accumulations lying with employers for financing the welfare funds. The Payment of Wages Act, 1936 lays down the conditions under which the employers may impose fines on their employees for acts of omissions and commissions. The Act further lays down that the amount so collected will have to be spent on purposes beneficial to the employees employed in the factory or the establishment. In many cases, the factories or establishments build up a sizeable accumulation of funds, which are not claimed by the employees or their dependants, though legally due to them. The State of Bombay was the first to feel that it

would be wise to gather these fines and accumulations into a fund, supplemented by State contributions and this substantial amount could be spent on promoting the collective welfare of the industrial workers. Hence, the State passed the Bombay Labour Welfare Fund Act, 1953. The occupiers of the factories and establishments covered by the Act raised legal objections and a long process of litigation ensued, finally resulting into the validation of the Act by the Supreme Court.

## CHAPTER 26

# THE INTERNATIONAL LABOUR ORGANISATION

### EARLY INTERNATIONAL EFFORTS TO REGULATE CONDITIONS OF LABOUR

The International Labour Organisation, one of the principal international organisations established under the Treaty of Versailles, was created in 1919. However, the idea of regulating conditions of labour by an international treaty had progressively influenced the minds of many persons even earlier. Soon after the Napoleonic Wars, Robert Owen emphasized at the Congress of Ex-La Chapelle the desirability of international regulation of labour in ensuring peace. Later, in 1839, the French Economist Blanqui observed that the primary purpose of treaties, instead of being built each other to kill men, ought to have been to preserve men's life and to make them happier. In 1847, Daniel Le Grand, a manufacturer, made an appeal to the governments of France, England, Prussia and Switzerland for the enactment of international legislation for the protection of the working class. The ideas of these pioneers influenced others and there was a widespread realisation of the importance of international regulation of conditions of labour.

It was as a result of these early deliberations that the first International Conference was convened by the German Government in 1890. Though the conference did not produce concrete results, it exerted a profound moral influence. The endeavour made at this conference and at the International Labour Congresses of Zurich

and Brussels held in 1897, fruitfully resulted in the establishment of the International Association for Labour Legislation. The newly created international agency made efforts to regulate conditions of labour but its progress was slow till 1905. Two Labour Conferences were held at Berne in 1905 and 1906, respectively, and it was in these conferences that, for the first time, two International Conventions were drawn up—the first prohibited the night work of women, while the second forbade the use of white phosphorus in the manufacture of matches.

The outbreak of the First World War brought into light the existence of many important labour problems and it was realised that these could be solved only through the regulation by a permanent and active international agency. The trade unions, which till then had been un-cooperative to the International Association for Labour Legislation, also changed their attitude. In 1916, the General Federation of Trade Unions at its Leeds Conference discussed severall about problems common to many countries and recommended the appointment of an International Commission for the purpose of supervising and executing labour agreements. It also suggested the establishment of an International Labour Office for gathering materials concerning labour legislation. Public opinion was strongly in favour of the establishment of such an agency. On the 31st January, 1919, the Paris Peace Conference appointed a Commission on International Labour Legislation. It was this Commission that proposed the establishment of the International Labour Organisation and drafted its Constitution. On June 28, 1919, the High Contracting Parties agreed to establish the I.L.O. as an organ of the League of Nations. Though the League of Nations could not survive the holocaust of the Second World War, the I.L.O. continued to maintain its existence. In 1946, when a new international political organisation known as the United Nations came into existence to replace the defunct League of Nations, the I.L.O. entered into relationship with the United Nations and became one of its specialised agencies.

#### PREAMBLE TO THE CONSTITUTION

The Preamble to the Constitution of the I.L.O. contains the basic purposes for the attainment of which the I.L.O. has been established. The Preamble is reproduced below.

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries; The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining objectives set forth in this Preamble, agree to the...Constitution of the International Labour Organisation.

### FUNDAMENTAL PRINCIPLES AND THE PHILADELPHIA CHARTER

✓ The I.L.O. set forth a few fundamental principles at the time of its inception. These principles are embodied in the form of a Charter of Freedom of Labour, the most outstanding among which are the following:

- ✓ (1) Labour is not a commodity;
- ✓ (2) Freedom of expression and of association are essential to sustained progress;
- ✓ (3) Poverty anywhere constitutes danger to prosperity everywhere;

- (4) The war against want requires to be carried on with unrelenting vigour within each nation and by continuance and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of the governments, join with them in free discussion and democratic decision with a view to the promotion of common welfare.

The General Conference of the I.L.O., at its 26th session held in Philadelphia in 1944, re-affirmed these principles and adopted a Declaration concerning the aims and purposes of the organisation and principles which were to inspire the policy of its Members. The Declaration popularly known as the Philadelphia Charter, says:

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- (c) all national and international policies and measures, in particular, those of an economic and financial character, should be judged in this light and accepted only insofar as they may be held to promote and not hinder the achievement of this fundamental objective;
- (d) it is a responsibility of the International Labour Organisation to examine and consider all international economic and financial policies; and
- (e) in discharging the tasks entrusted to it the International Labour Organisation, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

The Conference recognised the solemn obligation of the International Labour Organisation to further among the nations of the

world programmes which would achieve:

- (a) full employment and the raising of the standards of living;
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- (g) adequate protection for the life and health of workers in all occupations;
- (h) provision for child welfare and maternity protection ;
- (i) the provision of adequate nutrition, housing and facilities for recreation and culture; and
- (j) the assurance of equality of educational and vocational opportunity.

#### MEMBERSHIP

The Constitution of the I.L.O. provides that its membership is open to the States which were its members on the 1st November, 1945 and such other States which are either original members of the United Nations or are admitted to the Membership of the United Nations by a decision of the General Assembly in accordance with the provisions of the Charter. The General

Conference of the I.L.O. may also admit Members to the Organisation by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the government delegates present and voting. The new Members are required to communicate to the Director General of the International Labour Office their formal acceptance of the obligations of the Constitution of the Organisation. A Member of the I.L.O. can withdraw from the Organisation only after giving notice of its intention to do so to the Director General of the International Labour Office. "Such notice shall take effect two years after the date of its reception by the Director General, subject to the Member having at that time fulfilled all financial obligations arising out of its membership."<sup>1</sup> The total number of Members on June 1, 1973 was 136.

### ORGANISATION

The International Labour Organisation operates through three main organs. These are: (i) the International Labour Conference of national tripartite delegations which meets annually, (ii) the Governing Body—a tripartite executive council, and (iii) the International Labour Office—the permanent secretariat.

#### The International Labour Conference

The International Labour Conference is composed of four delegates nominated by each of the Member States, of whom two are government delegates and one each representing employers, and workers of the Member State. Non-government delegates are nominated in agreement with the most representative organisations of employers and work-people, as the case may be. Each delegate may be accompanied by advisers (also nominated by the government concerned) who are not to exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered, at least one of the advisers is to be a woman. "Each Member which is responsible for the international relations of non-metropolitan territories may appoint as

1. Art. 1 (5).

additional advisers to each of its delegates : (a) persons nominated by it as representatives of any such territory ; and (b) persons nominated by it to advise its delegates in regard to matters concerning non-self-governing territories."² In case of a territory under the joint authority of two or more Members, persons may be nominated to advise the delegates of such Members.

(Advisers can speak only on a request made by the delegate whom they accompany and by the special authorisation of the President of the Conference but are not allowed to vote.) A delegate may authorise one of his advisers to act as his deputy and in this case the adviser is allowed to speak and vote. Every delegate is entitled to vote individually on all matters which are taken into consideration.

(The International Labour Conference, which is the supreme body of the organisation, directs and supervises the work of the Governing Body and the International Labour Office. It also elects the members of the Governing Body and functions as a world parliament for labour and social questions. One of the most important tasks which the International Labour Conference has undertaken is to create world-wide uniform standards of labour in the form of Conventions and Recommendations. The Conference regulates its own procedure and may appoint committees to consider and report on any matters. It may exercise such powers and discharge such duties which it considers desirable for a proper functioning of the organisation. }

### The Governing Body

Originally, the Governing Body consisted of 24 persons including 12 government representatives for 12 Member States, 6 representing employers and 6 workers. Later, the proportion of government, employers and workers' representatives was raised to 16:8:8. At present, it is composed of forty persons, twenty representing government, ten representing employers and ten representing labour. Of the twenty government seats, ten are permanently allotted to the ten States of chief industrial importance. The ten

2. Art. 3 (3).

permanent Members are now, Canada, China, France, India, Italy, Japan, Soviet Union, the United Kingdom, the U.S.A. and West Germany. Except for the first two years of the establishment of the I.L.O., India has been enjoying the privilege of having a permanent seat on the Governing Body. The representatives of the employers and workers are elected respectively, by the employers' and workers' delegates to the I. L. Conference. At least two representatives each of the employers and workers are to be from non-European States.

The period of office of the Governing Body is three years. In case the elections of the Governing Body do not take place on the expiry of this period, it is to remain in office until such elections are held. The method of filling vacancies and of appointing substitutes and other similar questions are decided by the Governing Body subject to the approval of the Conference. The Governing Body is required to elect from its members, a Chairman and two Vice-chairmen so as to ensure representation of government, employers and workers, each. The procedure and the time of meetings are regulated by the Governing Body itself but a special meeting can be convened only on a written request made by at least sixteen representatives of the Governing Body.

The Governing Body, functioning under the general direction of the International Labour Conference, appoints the Director General of the International Labour Office, supervises its functioning, prepares the agenda to be placed before the I.L. Conference and discharges such other duties as are assigned to it by the Conference.

### **The International Labour Office**

The International Labour Office acts as a secretariat, a world information centre and a publishing house. The administrative head of the International Labour Office is its Director General. The Director General, subject to the instructions of the Governing Body, is "responsible for the efficient conduct of the International Labour Office and for such other duties which may be assigned to him."<sup>3</sup> He or his deputy is required to attend all meetings of the Governing

Body. The staff of the I.L. Office are to be appointed by the Director General under regulations approved by the Governing Body. As far as possible, the staff are to be appointed from different nations and a certain percentage of them is to consist of women.

The functions of the International Labour Office include: "the collection and distribution of information on all subjects relating to the international adjustment of the conditions of industrial life and labour, and particularly, the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or the Governing Body".<sup>4</sup> Subject to the directions of the Governing Body, the I.L. Office is required to:

- (a) prepare the documents on the various items of the agenda for the meeting of the Conference;
- (b) accord to Governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection;
- (c) edit and issue publications dealing with problems of industry and unemployment of international interest; and
- (d) carry out the duties required of it in connection with the effective observance of Conventions.

Generally, the International Labour Office exercises such powers and discharges such duties as are assigned to it by the Conference or the Governing Body.

### CONVENTIONS AND RECOMMENDATIONS

One of the principal functions of the International Labour Organisation is to secure international minimum social and labour standards. These standards are embodied in resolutions adopted by the International Labour Conference by at least 2/3rds of the delegates present at the Conference. The Conference decides whether these resolutions will take the form of a Convention or a Recom-

4. Art. 10 (1).

mendation. Thus, Conventions or Recommendations are instruments for creating and establishing international minimum social and labour standards.

### Conventions

There is a basic difference in the nature of obligations created by Conventions on the one hand, and Recommendations, on the other. A Convention imposes certain obligations. The Member State is under an obligation under the Constitution of the I.L.O. to bring, within a period<sup>2</sup> of one year at most or within 18 months in exceptional cases from the closing of the session of the Conference, a Convention before the authority within whose competence the matter lies, for ratification. If so ratified, the Convention acquires a binding character on the Member State. Although a Member is free to ratify or not to ratify a Convention, once it has been ratified by the appropriate authority of the Member State concerned, it becomes obligatory on the part of the Member to implement the Convention by legislative or other appropriate measures and to communicate the formal ratification to the Director General. Further, after ratification, a Member has to implement the Convention in toto without varying the provisions of the Convention in any respect, except when and where the Convention itself makes provisions for variations. In case a Member does not ratify a Convention, the Member is under the obligation to report periodically the position of law and practice in regard to the matters dealt with in the Convention indicating the difficulties that prevent or delay the ratification of such a Convention. However, a Convention, even if ratified by a Member State, does not automatically become binding on it, unless it has secured a minimum number of ratifications. The number of ratifications required to bring a Convention into force is fixed in each case by the terms of the Convention, any two ratifications being sufficient in the great majority of cases.

### Recommendations

A Recommendation, on the other hand, is not an obligation-

creating instrument. It is intended to serve as a guide to the Members in respect of the minimum labour standards concerning the subject matter of the Recommendation. A Member, of course, has to bring the Recommendation to the notice of the appropriate authority within one year at most or 18 months under exceptional conditions, after the closing of the session of Conference. Apart from bringing the Recommendation before the competent authority, no further obligation rests upon the Members except that they have to report as and when requested by the Governing Body showing the extent to which effect has been given or is proposed to be given to the provisions of the Recommendation.)) Thus, a Member State is free to modify the provisions of the Recommendation for the purposes of legislation or implementation, which is not the case with a Convention.

( In framing Conventions and Recommendations of general application it is the duty of the Conference to give due consideration to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different and to suggest modifications which it considers necessary to meet the case of such countries.)) The adoption of any Convention or Recommendation or the ratification of any Convention is not to be designed to affect "any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."5

(( Generally speaking, Recommendations lay down higher labour standards than what can possibly be embodied in Conventions. The Conference may feel that a particular proposal is not as yet ripe for being embodied in an obligation-creating Convention because of the reluctance of the Members and, therefore, it might satisfy itself by a Recommendation only. Gradually, as practices and standards in the Member countries improve and the standards laid down in a Recommendation become acceptable, it might be converted into a Convention at a later date. Similarly, as standards improve, Conventions are revised and fresh Conventions with higher labour standards are adopted. ) However, too much should

not be read into this distinction between Conventions and Recommendations on the basis of their obligation-creating capacities. The status of a Convention in relation to a Member State in which it is not enforced is analogous to that of a Recommendation and it serves as a guide in formulating its labour and social policy in the same way as a Recommendation does. An unratified Convention is as good as a Recommendation.

### **Obligations of Federal States**

The Constitution of the I.L.O. has specifically provided the obligations of federal States and non-metropolitan territories in respect of Conventions and Recommendations. In case a federal government regards them as appropriate under its constitutional system for federal action, its obligations are the same as those of other Member States. If the federal government regards them as appropriate under its constitutional system partly or wholly for action by the constituent States, the obligations of the federal government are the following:

- (1) to make effective arrangements for the reference of such Conventions and Recommendations to the appropriate authorities for the enactment of legislation or other action;
- (2) to arrange for periodical consultations between authorities of the federal and constituent units with a view to promoting, within the federal State, a co-ordinated action to give effect to the provisions of such Conventions and Recommendations;
- (3) to inform the Director General of the measures taken to bring such Conventions and Recommendations before the appropriate federal or constituent authorities and of the action taken by them;
- (4) in respect of each unratified Convention, to report to the Director General the position of law and practice of the federation and its constituent units in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise; and

- (5) in respect of each Recommendation, to report to the Director General the position of law and practice of the federation and its constituent units in regard to the Recommendation, showing the extent to which effect has been given or proposed to be given to the provisions of the Recommendation and such modifications of these provisions as have been found necessary in adopting or applying them.<sup>6</sup>

### **Non-metropolitan and Trust Territories**

The Members of the I.L.O. are also under the obligation to apply the provisions of the Conventions ratified by them to the non-metropolitan territories for whose international relations they are responsible, and also the trust territories for which they are the administering authorities except where the subject matter of the Convention is within the self-governing powers of the territory or the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions.<sup>7</sup>

Each such Member is required to inform the Director General the extent to which the provisions of the Convention are applied to non-metropolitan territories. If the subject matter of the Convention is within the self-governing power of any non-metropolitan territory, the Member responsible for the international relations of that territory is required to bring the Convention to the notice of the government of the territory as soon as possible with a view to the enactment of legislation or other action. Thereafter, the Member in agreement with the government of the territory may communicate to the Director General a declaration accepting the obligations of the Convention on behalf of such territory. A declaration accepting the obligations of any Convention may be communicated to the Director General "by two or more Members of the organisation in respect of any territory which is under their joint authority; or by any international authority responsible for the administration of any territory, in virtue of the

6. Art. 7

7. Art. 35 (1).

Charter of the United Nations or otherwise, in respect of any such territory.”<sup>8</sup>

Acceptance of the obligations of the Convention in these cases involves the acceptance on behalf of the territory concerned of the obligation stipulated by the terms of the Convention and the obligations under the constitution of the organisation which apply to ratified Conventions. A declaration of acceptance may specify modifications of the provisions of the Convention which are regarded necessary to adapt the Convention to local conditions. Each Member or the international authority in these cases may also communicate to the Director General a further declaration modifying the terms of any former declaration or terminating the acceptance of obligations of the Convention on behalf of the territory concerned. The obligations in respect of Conventions not ratified are the same as those of the other States.

#### MAJOR ACTIVITIES OF THE I.L.O.

The I.L.O. has made relentless efforts to achieve the objectives set forth in the Constitution. The major activities of the I.L.O. relate to: improvement of conditions of work and life, development of human resources and social institutions, and research and planning. The principal aim behind the improvement of conditions of work and life is “to promote national, regional and international action designed to adjust these conditions to the requirements of social progress at all stages of economic development, bearing in mind the interdependence of social progress and economic growth.”<sup>9</sup> Programmes in the field of human resources are intended “to determine principles and policies which should govern the development and utilisation of human resources, and to encourage their application through technical programmes in the fields of employment policy and employment promotion, vocational guidance and training, basic and advanced management training, manpower planning and organisation, and classification of occupations.”<sup>10</sup> The main purpose behind the development of social institutions is “to identify

8. Art. 35 (5).

9. I.L.O., “Activities of the I.L.O., 1966”, *Report of the Director General to the 51st Session of the International Labour Conference, 1967, Report I (Part II)*, p. 1.

10. *Ibid.* pp. 1-2.

and advance solutions to the problems connected with the framing and implementation of policies of economic and social development, such as the role of workers' and employers' organisations, co-operatives, rural organisations, and different forms of enterprise, and the improvement of labour relations at various levels--undertaking, industry, regional and national."<sup>11</sup>

### Means Adopted

The most outstanding technique running common to the various activities of the I.L.O. is the adoption of international standards. Although Conventions and Recommendations are the main instruments for setting international standards, recourse to other procedures has also been increasingly made. These include: (a) resolutions and conclusions adopted by expert committees and *ad hoc* conferences; (b) resolutions and reports adopted by bodies representing the views and interests of particular industries, sectors of economy or types of labour; (c) resolutions and reports of regional conferences and regional technical meetings; (d) resolutions of autonomous bodies dealing with social security questions; and (e) model codes on various matters. "The standards of policy expressed in these various forms are not of course upon the same footing as the Conventions and Recommendations adopted by the International Labour Conference; the obligations to submit to national competent authorities and to report as requested by the Governing Body are not applicable to them; they have not the same measure of authority and are essentially more experimental in character; but, subject to these reservations, they supplement in many respects the provisions of Conventions and Recommendations."<sup>12</sup>

Other means adopted by the I.L.O. in respect of its various activities comprise: extending technical assistance including making available the services of experts, conducting training courses, seminars and symposia, research and information gathering, and publications.

The details regarding the activities of the I.L.O. in major fields, other than setting up of international standards (which has

11. *Ibid.*, p. 2.

12. I.L.O., *The International Labour Code*, 1951, Vol. I, pp. LXXXII-LXXXIII.

been discussed in the Chapter under a separate head) are given below.

### (1) Improving Conditions of Work and Life

In relation to the conditions of work and life, the first concern of the I.L.O. is to keep abreast of general developments throughout the world in such fields as hours of work, holidays with pay, welfare facilities, remuneration, protection of women and young workers, social security, occupational safety and health, and the special problems of particular categories of workers. The International Labour Office collects relevant informations in these fields bearing in mind the need to establish minimum social standards and to improve them as and when possible. In this regard, special emphasis has been given to the social implications of economic growth in the developing countries and social consequences of rapid technological change. The I.L.O. has prepared numerous reports concerning conditions of work and life.

In addition to setting international standards, the I.L.O. also extends technical co-operation in the field. Technical co-operation is afforded by sending experts to various countries and through seminars and discussions on different aspects affecting living and working conditions. Besides, assistance is also given in the context of other programmes e.g. establishment of labour administration personnel, adoption of labour laws and regulations, programme for management development and workers' education. Many activities of the I.L.O. in the field are carried out in co-operation with the United Nations and its other specialised agencies.

### (2) Development of Human Resources

Programmes for the development of human resources relate to: manpower assessment and planning, creation and development of productive employment, manpower services and vocational training.

#### (a) Manpower Assessment and Planning

The I.L.O. has undertaken a series of research projects in the sphere of manpower assessment and planning. These are principally of two kinds. The first group of studies is intended to ascertain what relationship exists between the growth of employment

in major economic sectors by main occupational groups, and according to qualification-levels and growth of production. The second group relates to the study of variations from one country to another in the structure of employment by occupation in more clearly defined economic sectors—linking these variations with data on production, on the level of development of the country concerned, on the equipment used and on productivity.

These studies are helpful in arriving at a better understanding of the way in which employment evolves under the influence of various factors and in providing a guide to its future structure which will serve to determine training requirements and possibilities of increasing the level of employment. Research has also been undertaken on methods of forecasting manpower requirements in the rural sector. Many governments receive advice and services of I.L.O.'s experts in preparing their manpower plans.

#### *(b) Creation and Development of Productive Employment*

As regards creation and development of productive employment, the activities of the I.L.O. are at two levels. Firstly, research is conducted on general employment policy, particularly that of under-developed countries. The second relates to the study aimed at defining more clearly the difficulties encountered in the development of productive employment, and at determining the best way to take advantage of positive aspects with a view to ensuring the success of the measures to develop employment. Some of the specific projects of the I.L.O. concern with the promotion of rural employment, participation of youth in development, productive employment in small-scale and handicraft industries and public works and housing. The I.L.O. also extends technical assistance in the field.

#### *(c) Manpower Services*

The I.L.O. conducts studies and extends technical assistance in the field of manpower services including employment and vocational guidance services. Particular attention has been given to special services designed to help certain categories of workers such as disabled and migrant workers. The I.L.O. sends vocational counsellors and experts on aptitude tests to various countries in need of their services. Besides, discussions have been organised

from time to time on matters concerning vocational rehabilitation.

#### *(d) Vocational Training*

The activities of the I.L.O. in the sphere of vocational training comprise both research and information activities, and technical co-operation. Emphasis has been given on a co-ordinated, and wherever possible, an integrated approach. The basic aim behind these activities is "to help determine where vocational training action in developing countries may lead to an acceleration of the process of economic development by producing the strategic skills required for industries and for improved use of the land and other natural resources."<sup>13</sup>

Particular attention has been given to the problems of youth in the under-developed countries. Besides, other fields of I.L.O.'s interest include: apprenticeship training, training of personnel for the economic and social development of the developing countries, organisation planning for the training and training schemes for particular industries. (The I.L.O. has posted several experts in various countries for giving advice and assistance on different aspects of vocational training. A number of publications also relate to vocational training. The I.L.O. has set up an International Centre for Advanced Technical and Vocational Training which arranges training courses for various categories of personnel. Further, considerable attention has been given to management development programme.)

#### *(3) Development of Social Institutions*

The programmes of the I.L.O. in the sphere of development of social institutions relate to: labour legislation and labour relations, labour administration, workers' education, co-operatives and rural institutions, and research in the fields of social institutions and development. Increasing emphasis has been laid on ensuring a wide participation of various groups, particularly employers and workers, in economic and social development and its planning. During recent years, special attention has been given to decentralising and co-ordinating technical co-operation and other activities

13. I.L.O., *Report of the Director General to the 51st Session of the International Labour Conference, 1966*, p. 35.

in the field. A number of experts have been deputed in different regions for rendering expert advice. The major areas concerning I.L.O.'s programme for the development of social institutions are discussed below.

✓ (a) *Research on Social Institutions Development*

The I.L.O. has undertaken several research projects on matters concerning social institutions development. Many recent studies are designed to facilitate co-ordination and joint action based on common general principles and methods.

✓ (b) *Labour Legislation and Labour Relations*

The questions pertaining to labour legislation and labour relations constitute an important aspect of discussions by the I.L. Conference. The I.L. Office conducts studies and prepares reports in the field which, in addition to facilitating discussions by the Conference, also help the strengthening of national labour relations system and the broadening of social participation in economic and social development. Problems relating to labour legislation and labour relations are also discussed at other meetings e.g. Regional Conferences, Advisory Committees and Industrial Committees.

The I.L.O. makes available the services of experts who assist governments in the preparation or revision of draft labour codes or legislative texts of a more limited scope. Besides, assistance in improving labour-management relations is given through advice to the governments and training government officials and managerial staff in labour relations and personnel management practices. Further, (the I.L.O. has developed educational activities in the field by arranging lectures and courses dealing with specific labour relations problems and practices. Particular mention may be made of lectures and courses organised at the International Institute of Labour Studies and the International Centre for Advanced Technical and Vocational Training.) Close relations are also maintained with other international organisations in the field.

✓ (c) *Labour Administration*

The I.L.O. arranges discussions on the role of Ministries of Labour, particularly in developing States. Resolutions concerning

national labour departments and other public institutions responsible for administration of labour have also been adopted. The I.L.O. also conducts studies on the role of labour administration and organisation of labour inspection. Other programmes of the I.L.O. in the field include: sending experts to the needy countries and giving assistance in the training of officials in the field of labour administration.

#### *(d) Workers' Education*

The I.L.O. has adopted several measures in the field of workers' education. The main activities of the I.L.O. in the field comprise: publications and preparing study materials on different topics, holding seminars, despatch of expert missions, granting fellowships, and technical and material participation in educational projects.

#### *(e) Co-operatives and Rural Institutions*

The I.L.O. has engaged itself in both research and operational activities in respect of co-operatives and rural institutions. It cooperates with other international organisations in the integration of indigenous and tribal population and the settlement of the nomads, and other similar groups. Special efforts have been made to promote institutional development in rural areas as a means of insuring maximum participation of the working population in the development process.

An important Recommendation adopted by the I.L. Conference in 1966 concerns with the role of co-operatives in the economic and social development of the developing countries. Besides, the I.L. Office collects and disseminates informations and conducts research on various aspects of co-operatives. Useful literature is also published on co-operatives and rural institutions. The I.L.O. also extends intensive as well as extensive technical assistance. Many activities of the I.L.O. in the field have been undertaken in collaboration with other international agencies e.g. FAO, WHO, UNICEF and UNESCO.

#### *Other Activities*

In addition to the activities mentioned above, the I.L.O. has

concerned itself with other questions in the labour and social fields. These comprise : development and improvement of international standards for labour statistics ; research projects in the fields of economics, statistics and automation; promotion of universal respect for the observance of human rights; assistance in the implementation of standards; and regular publications.

### **I.L.O.'s Technical Assistance and India**

India has been an important beneficiary of the technical assistance programme of the I.L.O. The pace of such assistance was remarkably accelerated after 1950 with the initiation of the Expanded Programme of Technical Assistance of the U. N. and its Specialised Agencies. India has received I.L.O.'s technical assistance in several forms i.e. (a) expert advice, (b) organisation of training institutes and programmes, (c) exchange of technical information, (d) grant of fellowships and internships, (e) organisation of seminars and technical conferences, and (f) supply of equipment. Notable fields in which India has been benefited by the advice of I.L.O.'s experts include: (a) drafting labour laws and regulations, (b) occupational safety and health, (c) social security, (d) productivity, (e) small-scale and handicraft industries, (f) vocational guidance, (g) vocational training, (h) training within industry, (i) workers' education, (j) co-operatives, and (k) employment information and occupational classification.

### **Regional Activities**

During recent years, the I.L.O. has given special attention to the economic and social problems of Member countries on a regional basis. In particular, the I.L.O. has sought to help countries of developing regions with a view to solving "the social and economic problems with which they are faced in their quest for higher standards of life, work and opportunity for their population"<sup>14</sup>

The main means of regional activities comprise : Regional Conferences, Regional Advisory Committees, Regional Technical

14. I.L.O. , "Programme and Structure of the I.L.O.", *Report of the Director General to the 48th Session of the International Labour Conference, 1964, Report I (Part I)*, p. 181.

Meetings, Regional Studies, and Regional Operational Programmes. So far, Regional Conferences have been held for Latin America, Asia, Africa, and Europe. The Regional Conferences play a notable role not only in preparing on a regional basis for standard setting activities, but also in evaluating the social needs and problems of the regions concerned, periodically reviewing the effectiveness of the I.L.O.'s action in dealing with these needs and problems and setting new targets. Besides, Advisory Committees for Asia, Africa and Latin America have been set up. These Committees operate during the interval between Regional Conferences. A number of Field Offices have been set up for the preparation, evaluation and inspection of the I.L.O.'s technical assistance projects and for the follow-up work on these projects. Liaison Offices have been created with a view to establishing liaison with the U.N. regional economic commissions concerned with matters of social and labour policy. Regional Technical Meetings are also frequently convened.

Speaking of the usefulness of the Regional Conferences and Advisory Committees and their utility in strengthening the mission of the I.L.O., the Director General in his report of 1964 very aptly said:

The Organisation has a clear and exemplary mission: to build bridges as well as, itself, to serve as a bridge between all regions and all countries, bringing together behind a world policy on labour the experience and aspirations of the component regions, while at the same time contributing to the development of social progress in each area of the world. Thus, the intensification of regional activity, far from detracting from our universal mission, is an integral part of the overall task for which the I.L.O. exists and will in fact enhance the Organisation's capacity to attain its general objectives by bringing it closer to regional and national realities.<sup>15</sup>

India has actively participated in the regional activities of the I.L.O. for the Asian countries and benefited from such a participation.

15. *Ibid.* pp. 182-183.

## Industrial Committees

The I.L.O. has set up Industrial Committees for certain important industries with a view to examining in detail their special problems. Industrial Committees have so far been set up for (1) Textiles, (2) Coal Mines, (3) Inland Transport, (4) Petroleum, (5) Iron and Steel, (6) Metal Trades, (7) Building, Civil Engineering and Public Works, and (8) Chemical Industries. Standing Committees on the pattern of Industrial Committees have also been set up in respect of Work on Plantations, Salaried Employees and Professional Workers, and Agriculture. Each of these Committees consists of representatives of governments, employers and workers. India is a member of most of these Committees. Besides, special tripartite meetings are also convened on an *ad hoc* basis to consider the problems of such industries.

Although, "the exact functions of the Committees had never been defined"<sup>16</sup>, the activities of the Committees have been of quite substantial scope and magnitude. The discussions at the sessions of the Committees have covered a wide variety of subjects in such areas as "labour-management relations, conditions of work, safety and health, consequences of technological change, vocational training and regularisation of employment."<sup>17</sup> In some cases, discussions have prepared the ground work for international agreements on specific issues and have resulted in the adoption of Conventions and Recommendations by the Conference. The deliberations of the Committees have, in other cases, resulted in convening *ad hoc* expert meetings, and have led countries with certain shared responsibilities and interests to make use of the I.L.O. machinery to consider their special problems.

Generally speaking, these Committees have been set up to discuss problems and not to attempt to reach firm agreements binding governments, employers or workers. They have filled a gap in the I.L.O.'s programme in that they have made it possible to widen the range of social issues brought under review. The International Labour Conference has obvious limitations in considering detailed questions related to specific industries or occupations at

16. *Ibid.*, p. 176.

17. *Ibid.*, p. 175.

its annual sessions. "But the Industrial Committee can take up a series of such questions, each selected in terms of social pre-occupations and needs of the industry or occupation concerned. In this way, it is possible to pioneer in the consideration of certain kinds of questions rather than to await the gradual cumulation of an industry-wide denominator for international action."<sup>18</sup>

## INTERNATIONAL LABOUR STANDARDS AND THEIR INFLUENCE ON INDIAN LABOUR LEGISLATIONS

The International Labour Organisation, from its very inception, has undertaken the task of creating international minimum standards of labour in the form of Conventions and Recommendations<sup>19</sup> which constitute the International Labour Code. They cover a wide range of subjects including wages, hours of work, annual holidays with pay, minimum age of employment, medical examination, maternity protection, industrial health, safety and welfare, social security, freedom of association, right to organise and bargain collectively, employment conditions of seamen and unemployment. As on June 1, 1973, the I.L.O. had adopted 136 Conventions. The details of the Conventions and Recommendations may be discussed under the following main heads:

- ✓ (1) Conditions of work, including hours of work, weekly rest, holidays with pay and wages;
- ✓ (2) Employment of children and young persons;
- ✓ (3) Employment of women;
- ✓ (4) Industrial health, safety and welfare;
- ✓ (5) Social security;
- ✓ (6) Industrial relations;
- ✓ (7) Employment and unemployment; and
- ✓ (8) Conditions of employment at ..

### (1) Conditions of Work

The International Labour Organisation has devoted continued attention to the conditions of work of labour at work places

18. I.L.O. "The I.L.O. in a Changing World", *Report of the Director General to 42nd session of the International Labour Conference, 1958*. p. 14.

19. See also pp. 665-670.

including (a) hours of work, (b) weekly rest, (c) holidays with pay (d) principles and methods of wage regulation and (e) labour administration and inspection. A large number of Conventions and Recommendations covering conditions of work of labour have been adopted by the International Labour Conference.

### *(a) Hours of Work*

#### *(i) Industry*

The Hours of Work (Industry) Convention No. 1 adopted in the first session of the International Labour Conference relates to hours of work in industry. The Convention limits the hours of work in industrial undertakings to eight in the day and fortyeight in the week. It provides certain exceptions in respect of persons holding positions of supervision or management and those employed in confidential capacity. The limit of hours of work may be exceeded in certain cases (e.g. in case of accident or in case of urgent work to be done to machinery or plant or in continuous processes, subject to certain conditions). The Convention contains special provisions for countries where the 48 hour work might be inapplicable. As on June 1, 1973, the Convention was in force in 35 countries of the world including India. India ratified the Convention in 1921 on getting a special relaxation. The Factories Act, 1948 and the Mines Act, 1952 seek to implement the provisions of the Convention.

#### *(ii) Mines*

The Hours of Work (Coal Mines) Convention (No. 31) 1931, subsequently revised by Hours of Work (Coal Mines) (Revised) Convention (No. 46), 1935, regulates hours of work in coal mines. The time spent in the mine by the workers employed in underground and hard coal mines is not to exceed seven and three quarters in a day. However, in case of underground lignite mines the time spent in the mine may be prolonged under certain conditions by a collective break of not more than 30 minutes. Hours of work in open hard or lignite mines are not to exceed eight in the day or fortyeight in the week. The Convention has been ratified by only two Member States, i.e. Spain and Argentina.

*(iii) Road Transport*

The Hours of Work and Rest Periods (Road Transport) Convention (No. 67), 1939, in force in only four countries (as on June 1, 1973), prescribes hours of work of professional drivers of road-transport vehicles to eight in a day and fortyeight in a week. Time spent in work done during running time of the vehicle, time spent in subsidiary work, periods of mere attendance and breaks of rest and interruptions of work are to be included in calculating hours of work. Night Work (Road Transport) Recommendation (No. 64), Methods of Regulating Hours (Road Transport) Recommendation (No. 65), and Rest Periods (Private Chauffeurs) Recommendation (No. 66), all adopted in 1939, deal with night work, methods of regulating hours of work, and rest periods of private chauffeurs, respectively.

*(iv) Commerce and Offices*

The Hours of Work (Commerce and Offices) Convention (No. 30), 1930 prescribes the maximum of eight hours in a day and fortyeight in a week for workers employed in commerce and commercial and trading establishments, administrative offices and mixed commercial and industrial establishments. It provides certain exceptions on prescribed conditions. The spreadover, however, is not to exceed 10 hours in any day. On June 1, 1973, the Convention was in force in 23 countries of the world.

The Hours of Work (Hotels etc.) Recommendation (No. 37), 1930, Hours of Work (Theatres, etc.) Recommendation (No. 38), 1930 and Hours of Work (Hospital, etc.) Recommendation (No. 39), 1930 also concern with limiting the hours of work.

*(v) Other Establishments*

Separate Conventions and Recommendations regulate hours of work in textile industries (Con. 7), public works (Con. 51), sheet glass works (Con. 43), glass bottle works (Con. 49), fishing industry and inland navigation (Recs. 7,8).

A number of Conventions prescribing 40 hours of week were adopted in 1935. The principle of 40 hours a week was embodied in these Conventions mainly as a result of the existence of widespread unemployment at that time and it was considered desirable

to reduce hours of work in all forms of employment so that workers might be enabled to share the benefit of rapid technical progress.

*(b) Weekly Rest*

The Weekly Rest (Industry) Convention (No. 14), 1921 provides that "the entire personnel employed in any industrial undertaking is to enjoy in every period of seven days a period of rest amounting to at least 24 consecutive hours." On June 1, 1973, the Convention was in force in 80 countries of the world. India ratified the Convention on May 11, 1923. The existing enactments embodying the provisions of the Convention in India include the Factories Act, 1948 and the Mines Act, 1952.

Article 6 of the Hours of Work (Coal Mines) Convention (Revised) (No. 46), 1935 prohibits the employment of miners on underground work in coal mines on Sundays and legal public holidays. An article of Hours of Work and Rest Periods (Road Transport) Convention (No. 67), 1939 provides weekly rest of at least 30 consecutive hours for road transport travelling staff.

*(c) Holidays with Pay*

The Holidays with Pay Convention (No. 52), 1936 fixes the length of holidays at not less than 6 working days after a year's service, and for persons under 10 years of age, the annual holidays are not to be less than 12 working days. [Public and customary holidays and interruptions of work due to sickness are not to be included in the annual holidays with pay] The Convention applies to industrial and commercial establishments including newspaper undertakings, establishments for the treatment and care of the sick, infirm, destitute or mentally unfit; hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses; theatres and places of public amusements; and mixed commercial and industrial establishments. On June 1, 1973, the Convention was in force in 48 countries of the world. The Convention was revised by the Holidays with Pay (Revised) Convention No. 132, 1970. The Holidays with Pay (Agriculture) Convention (No. 101), 1952 in force in 38 countries (as on June 1, 1973) lays down the principle of granting holidays with pay to agricultural workers but the authorities of each country are free to decide the length of the

holidays and other particulars.

The Holidays with Pay Recommendation (No. 47), 1936, Holidays with Pay (Agriculture) Recommendation (No. 93), 1952 and Holidays with Pay Recommendation (No. 98), 1954 also concern with holidays with pay. Recommendation No. 47 defines certain points covered under the Holidays with Pay Convention (No. 52), 1936. Recommendation No. 93 lays down that the minimum length of the holidays with pay should be one working week for adults and two working weeks for persons under sixteen after a period of one year's continuous service. Recommendation No. 98, which applies to all employed persons except seafarers, agricultural workers or persons in family undertakings, prescribes minimum annual holidays with pay of two normal working weeks after one year's employment with the same employer.

#### *(d) Wages*

The International Labour Conference has also adopted Conventions and Recommendations dealing with the protection of wages and methods of minimum wage regulation.

##### *(i) Protection of wages*

The Protection of Wages Convention (No. 95), 1949 deals with the protection of wages. The Convention provides that wages payable in money must be paid regularly in legal tender directly to the worker concerned and deductions may be permitted only under conditions and to the extent prescribed by national enactments or collective agreement or arbitration award. It also prohibits payment in the form of promissory notes, vouchers or coupons. On June 1, 1973, the Convention was in force in 68 countries. The Protection of Wages Recommendation (No. 85) which was also adopted the same year contains detailed rules in respect of deductions from wages, fixation of wage periods, maintenance of wage statements and pay-roll records.

##### *(ii) Minimum wages*

The Minimum Wage Fixing Machinery Convention (No. 26) 1928, which on June 1, 1973, was in force in 82 countries of the world including India, provides for the creation of a wage fixing machinery in certain trades. The Convention requires the consultation with the representatives of the employers and workers before

such a machinery is applied in a trade and it imposes an obligation on the ratifying countries to associate both the employers and workers in the operation of the machinery. The minimum wages fixed by the machinery are to be binding on employers and workers. (The existing legislation embodying the provisions of the Convention in India is the Minimum Wages Act, 1948.) The Minimum Wage Fixing Machinery Recommendation (No. 30) was also adopted the same year. The Recommendation requires such a machinery to investigate into the conditions relevant to the trades and to consult the affected interests before fixing minimum wages. A new Convention, namely, the Minimum Wage Fixing Convention (No. 131) was adopted in 1970.

The Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99), 1951, which, on June 1, 1973, was in force in 40 countries, prescribes the creation and maintenance of adequate machinery for the fixation of minimum rates of wages for workers employed in agricultural undertakings and related occupations. The Minimum Wage Fixing Machinery Recommendation (No. 89), 1951 also deals with minimum wage regulation in agriculture.

#### (e) *Labour Administration and Inspection*

Though most of the Conventions adopted by the I.L. Conference contain provisions of enforcement, some Conventions and Recommendations deal exclusively with the problems of labour administration and inspection. The Labour Inspection Convention (No. 81), 1947 which, on June 1, 1973, was in force in 78 countries including India, requires the governments to maintain a system of labour inspection for the purpose of securing the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work, supplying technical information and advice to workers and employers and bringing to the notice of the competent authorities, defects or abuses not covered by law. India ratified the Convention on the 7th April, 1949. Most of the existing protective labour laws in India embody the principles contained in the Convention. The Labour Inspection (Agriculture) Convention No. 129, 1969 deals with labour inspection in agriculture.

The Labour Inspection Recommendation (No. 20), 1923 deals

with details of schemes for labour inspection. The Labour Inspection Recommendation (No. 80), 1946 and the Labour Inspection Recommendation (No. 81), 1947 also deal with the problems of labour administration and inspection.

## (2) Employment of Children and Young Persons

The International Labour Conference has adopted a number of Conventions and Recommendations dealing exclusively with the problems of employment of children and young persons. Besides, a number of other Conventions and Recommendations relate directly or indirectly with the conditions of youth. Standards affecting conditions of employment of children and young persons relate to: minimum age of employment, prohibition of employment of children and young persons in certain hazardous occupations, medical examination, night work, and preparation for employment.

### (a) *Minimum Age of Employment*

The Minimum Age (Industry) Convention (No. 5), 1919, the Minimum Age (Sea) Convention (No. 7), 1920, the Minimum Age (Agriculture) Convention (No. 10), 1921, the Minimum Age (Non-Industrial Employment) Convention (No. 33), 1932, and the Minimum Age (Fishermen) Convention (No. 112), 1959 provide a general minimum age of 14 years for admission to employment in the industries covered by the Conventions. Conventions No. 5, 7, and 33 were subsequently revised respectively by the Minimum Age (Industry) (Revised) Convention (No. 59), 1937, the Minimum Age (Sea) (Revised) Convention (No. 58), 1936, and the Minimum Age (Non-Industrial Employment) (Revised) Convention (No. 60), 1937. The revised Conventions raise the minimum age of employment to 15 years. The minimum Age (Industry) Convention (No. 5), 1919 was, on June 1, 1973, in force in 60 countries including India. The Indian Factories Act, 1948 incorporates the provisions of the Convention. On June 1, 1973, Convention Nos. 10, 7, and 33 were in force respectively in 41, 43 and 23 countries. The Minimum Age (Trimmers and Stockers) Convention (No. 15) 1921, which on June 1, 1973, was in force in 60 countries of the world including India, prohibits the employment of young persons under 18 years in the hazardous occupation of Trimmer and

Stocker at sea. The Minimum Age (Underground Work) Convention (No. 123), 1965 regulates minimum age of employment in underground operations.

*(b) Medical Examination*

The Medical Examination (Seafarers) Convention (No. 73), 1946, the Medical Examination of Young Persons (Industry) Convention (No. 77), 1946, the Medical Examination of Young Persons (Non-Industrial Occupations) Convention (No. 78), 1946, the Medical Examination (Fishermen) Convention (No. 113), 1959 and the Medical Examination of Young Persons (Underground Work) Convention (No. 123), 1965 concern with medical examination to determine the fitness of young persons for employment. On June 1, 1973, Convention No. 73 was in force in 23 countries, Convention No. 77 in 25, Convention No. 78 in 24, Convention No. 113 in 18 and Convention No. 124 in 28 countries. The Medical Examination of Young Persons Recommendation (No. 79), 1946 suggests procedures for applying the provisions of Convention Nos. 77 and 78. The Conventions mainly provide that young persons upto 18 shall be admitted to employment only after they are declared physically fit on examination by a medical practitioner. The cost of the medical examination is to be borne by the employer.

*(c) Night Work*

The International Labour Conference has adopted a few Conventions and Recommendations restricting night work of children and young persons mainly with the purpose of providing them with adequate rest, reducing their fatigue and ensuring adequate time for their normal recreational and cultural activities.

The Night Work of Young Persons (Industry) Convention (No. 6), 1919 which, on June 1, 1973, was in force in 52 countries of the world including India, prescribes restrictions on night work of young persons in industrial undertakings. The Convention provides that children and young persons under 18 years of age are not to be employed for work at night for a period of 11 consecutive hours including the interval between 10 P.M. and 5 A.M. The Convention was revised by the Night Work of Young Persons (Industry) (Revised) Convention (No. 90), 1948 which extends the period of uninterrupted rest for young persons under

18 from 11 to 12 hours. Young persons under 16 years of age are not to work between 10 p.m. and 6 a.m. The revised Convention (No. 90) was, on June 1, 1973, in force in 36 countries of the world including India. The existing Indian enactments embodying the provisions of the Conventions are the Factories Act, 1948, the Mines Act, 1952, the Plantation Labour Act, 1951, and the Employment of Children Act, 1938 as amended.

(The Night Work of Young Persons (Non-Industrial Occupations) Convention (No. 79), 1946 regulates night work of young persons in non-industrial occupations. The Convention provides that children under 14 years of age are not to be employed for work at night during a period of at least 14 consecutive hours.) The same provision is applicable in case of children over 14 who are subject to full time compulsory school attendance. Young persons under 18 and children over 14 who are not subject to compulsory school attendance are not to be employed at night during a period of at least 12 consecutive hours. The Night Work of Young Persons (Non-Industrial Occupations) Recommendation (No. 80), 1946 lays down the details and administrative procedures to be followed in respect of the Convention.

#### *(d) Preparation for Employment*

A number of Recommendations deal with the problem of preparation for the employment of children and young persons. Notable Recommendations are: the Vocational Education (Agriculture) (No. 15), 1921, the Unemployment (Young Persons) (No. 45), 1935, the Vocational Education (Building) (No. 56), 1937, the Vocational Training (No. 57), 1939, the Apprenticeship (No. 60), 1939, the Employment (Transition from War to Peace) (No. 71), 1944, and the Vocational Guidance (No. 87), 1949. The Recommendations are based on the principle that young persons should have free access to the available training courses designed to meet the needs both of young persons and the economic and social conditions of the particular countries. The training courses are to be co-ordinated with the activities of the authorities responsible for employment policy and education and at the same time financial assistance has to be made available to young persons receiving training for vocation.

Apart from the Conventions and Recommendations listed above, a number of Conventions and Recommendations apply equally to young and adult workers. Mention may be made of those dealing with hours of work, weekly rest, annual holidays with pay, industrial health, safety and welfare, labour inspection and employment services.

### (3) Employment of Women

Though most of the Conventions and Recommendations adopted by the I.L. Conference apply equally to men and women workers, separate standards have also been created exclusively affecting women workers. The Conventions and Recommendations adopted to regulate conditions of employment exclusively of women workers deal with maternity protection, night work, employment in unhealthy processes and equal pay.

#### (a) Maternity Protection

The first Convention dealing with maternity protection was the Maternity Protection Convention (No. 3), 1919 which was subsequently revised by Convention (No. 103) adopted in 1952. The Maternity Protection Convention (Revised) (No. 103,) 1952 deals with the maternity protection immediately before and after child birth. It provides that no woman worker should be required to work for at least twelve weeks at the time of her confinement and at least six weeks of this period should follow the birth of the child. Such a woman worker should also be entitled to receive cash and medical benefits as a matter of right by social insurance or public funds and is not to be discharged during the period of her maternity leave. The Maternity Protection (Agriculture) Recommendation (No. 12), 1921, applies the principle of the Convention to women workers employed in agriculture. The Maternity Protection Recommendation (No. 95), 1952 supplements Convention No. (103) and provides that the period of maternity leave may be extended to fourteen weeks in case a woman's health makes such an extension desirable. It further provides that the amount of maternity benefit should be at par with the earnings of the woman and her seniority right should be preserved during the period of maternity leave. The breaks for nursing should be at least an hour and a half daily and the pregnant woman should not be allowed to work

overtime or during night.

### ✓ (b) *Night Work*

The first Convention dealing with prohibition of employment of women during night was the Night Work (Women) Convention (No. 4), 1919. The Convention was superseded by the Night Work (Women) (Revised) Convention (No. 41), 1934, which was succeeded by the Night Work (Women) (Revised) Convention (No. 89), 1943. Convention No. 4 which, on June 1, 1973, was in force in 57 countries including India, places a restriction on the employment of women during night in any public or private industrial undertaking. The Convention defines "night" to signify a period of "consecutive hours including the interval between 10 P.M. and 5 A.M." A special article relating to India authorises her to exclude undertakings other than factories from the provisions of the Convention. The main provisions of the Convention were extended to women workers employed in agriculture by the Maternity Protection (Agriculture) Recommendation (No. 12), 1921. Convention No. 41 excludes from its scope women who hold positions of management and are not ordinarily engaged in manual work. It also authorises the competent authorities to substitute the interval between 11 P.M. and 6 A.M. for the interval between 10 P.M. and 5 A.M. Convention No. 89, also in force in India, provides for a minimum rest period of at least 11 consecutive hours including an interval of at least seven hours falling between 10 P.M. and 7 A.M.

The existing Indian enactments embodying the provisions of the Conventions are the Factories Act, 1948 and the Mines Act, 1952.

### ✓ (c) *Employment in Unhealthy Processes*

The White Lead (Painting) Convention (No. 13), 1921 prohibits the use of white lead or sulphate of lead by women in industrial painting. Another Convention, namely, the Underground Work (Women) (No. 45), 1935, which on June 1, 1973, was in force in 75 countries including India, forbids the employment of women in any kind of underground mining. Exceptions may be made in respect of women employed on certain non-manual or non-industrial work e.g. managerial staff, staff of health and welfare services. The existing

Indian legislation embodying the provisions of the Convention is the Mines Act, 1952. A Recommendation (No. 4), 1919 forbids the employment of women in a number of industrial processes involving proximity to lead and zinc.

#### *(d) Equal Pay*

The Equal Remuneration Convention (No. 100), 1951 which, on June 1, 1973, was in force in 78 countries including India, calls for equal remuneration for men and women for work of equal value. The principle may be applied by national laws or regulations, legally established or recognised machinery for fixing wages, collective agreements or by a combination of these methods. In India, a combination of methods stipulated in the Convention has been used to give effect to the principle. The Equal Remuneration Recommendation (No. 90) suggests various procedures to be followed for ensuring a progressive introduction of the principle.

#### *(4) Health, Safety and Welfare*

In promoting the interests of labour in the fields of health, safety and welfare, the I.L.O. has had recourse to a variety of methods e.g. international regulations, model codes, technical monographs on dangerous machinery, and assistance to governments in drafting safety regulations etc. Conventions and Recommendations in these fields suggest general principles concerning the prevention of accidents and the protection of health of the workers and also indicate the special requirements of particular industries and processes. These Conventions and Recommendations may be discussed under the following sub-heads:

##### *(a) Safety*

The Prevention of Industrial Accidents Recommendation (No. 31), 1929, the Power-driven Machinery Recommendation (No. 32), 1929, and the Labour Inspection Recommendation (No. 29), 1923 deal with general problems of safety. Recommendation No. 31 provides in detail the methods of co-operation between State Inspectorates, employers' and workers' organisations and other bodies in the prevention of accidents. It also prescribes the general principles to be embodied in safety legislation. Recommendation No. 32 lays down that power-driven machinery should not be ins,

talled unless it is furnished with the safety appliances required by law. Recommendation No. 20 provides that the principal function of the inspection system should be to secure the enforcement of laws and regulations relating to conditions of work and protection of workers including matters of safety and health. Particular industries or processes in respect of which Conventions or Recommendations concerning safety have been adopted include : docks, marking of weight, building construction, and coal mines. The Marking of Weight (Packages Transported by Vessels) Convention (No. 27), 1929 which, on June 1, 1973, was in force in 50 countries including India, requires every package of one ton or more gross weight consigned for transport by sea or inland water to have its gross weight plainly or durably marked on the outside before it is loaded on a ship or other vessel. Other Conventions relating to safety are: Guarding of Machinery Convention (No. 119), 1963, and the Maximum Weight Convention (No. 127), 1967.

The I.L. Conference has framed a Model Code of Safety Regulations for Factories and a Model Code of Safety for Underground Work in Coal Mines. Model Codes relating to electricity, toxic substances and dangerous radiations have also been prepared.

#### *(b) Industrial Hygiene and Health*

A few Conventions and Recommendations seek to protect workers against certain occupational diseases and health hazards. These include : Anthrax Prevention Recommendation (No. 3), the Lead Poisoning Recommendation (No. 4), the White Phosphorus Recommendation (No. 6), all adopted in 1919, the White Lead Painting Convention (No. 13), 1921, the Radiation Protection Convention (No. 115), 1960, and the Hygiene (Commerce and Offices) Convention (No. 120), 1964.

Recommendation No. 3 suggests making of arrangements for the disinfection of wool infected with anthrax spores either in the country exporting such wool or at the port of the entry. Recommendation No. 4 deals with the protection of workers against lead poisoning and provides that the employment of women and young persons in processes involving the use of lead compounds be permitted only on the adoption of certain health precautions. Recommendation No. 6 prohibits the use of white phosphorus in the manufacture of matches. The White Lead Painting Convention (No. 13), 1921,

which, on June 1, 1973, was in force in 49 countries, forbids the use of white lead and sulphate of lead and all products containing these pigments in the internal painting of buildings.

The Labour Inspection (Health Service) Recommendation (No. 5), 1919 deals with the establishment of Government Health Services specially for safeguarding the health of workers. The Protection of Workers' Health Recommendation (No. 97), 1953 relates to the protection of health of workers in places of employment and covers a wide range of health aspects including health hazards, medical examinations, notification of occupational diseases and the provision of first-aid facilities.

### *(c) Welfare*

The I.L.O. has taken recourse to a number of activities in promoting the welfare of workers. Two Recommendations deal with various aspects of workers' welfare. The Utilization of Spare Time Recommendation (No. 21), 1924 deals with the principles and methods for securing the best use of the spare time of workers. The Living-in Conditions (Agriculture) Recommendation (No. 16), 1921 recommends that measures should be adopted to regulate the living-in conditions of agricultural workers with due regard to the climatic or other conditions affecting agricultural work.

## **(5) Social Security**

The International Labour Conference has given serious attention to the problems of social security against various risks to which workers are exposed. A number of Conventions and Recommendations deal with workmen's compensation, sickness insurance, invalidity, old age and survivors' insurance, unemployment provisions, maternity protection and general aspects of social security. A brief account of the Conventions and Recommendations dealing with social security is given below under suitable sub-heads:

### *(a) Workmen's Compensation*

Conventions dealing with workmen's compensation are: the Workmen's Compensation (Accidents) Convention (No. 17), 1925, the Workmen's Compensation (Occupational Diseases) Convention (No. 18), 1925, the Equality of Treatment (Accident Compensation)

Convention (No. 19), 1925, and the Workmen's Compensation (Occupational Diseases) (Revised) Convention (No. 42), 1934. The Recommendations adopted in this field include: the Workmen's Compensation (Minimum Scale) No. 22, the Workmen's Compensation (Jurisdiction) (No. 23), the Workmen's Compensation (Occupational Diseases) (No. 24), and the Equality of Treatment (Accident Compensation) (No. 25), all adopted in 1925.

Convention No. 17, which on June 1, 1973, was in force in 52 countries of the world, provides that workmen should receive compensation for personal injury caused due to industrial accident. Compensation for death or permanent disablement should be in the form of periodical payments and injured workmen should be entitled to receive necessary medical aid. Recommendation No. 22 suggests certain scales of compensation.

Convention No. 18, subsequently revised by Convention No. 42, provides for the payment of compensation to workmen incapacitated by certain occupational diseases. In the event of death resulting from such occupational diseases, compensation should be paid to the dependants of the deceased workmen. The Convention also lays down that the rates of compensation should not be less than those prescribed by national enactments for injury resulting from industrial accidents. (On June 1, 1973, Convention No. 18 was in force in 53 countries of the world including India.) The existing Indian laws incorporating the provisions of the Convention are: the Workmen's Compensation Act, 1923 and the E.S.I. Act, 1948. Convention (No. 18 and 42) were again revised by the Employment Injury Convention (No. 121), 1964. Convention No. 19 deals with equality of treatment in matters of compensation.

### *(b) Sickness Insurance*

The Sickness Insurance (Industry) Convention (No. 24), and the Sickness Insurance (Agriculture) Convention (No. 25), both adopted in 1927, deal with sickness insurance of workers employed respectively in industry and agriculture. Both the Conventions recommend the establishment of a system of compulsory sickness insurance and provide for the payment of cash benefit for at least the first 26 weeks of incapacity to insured persons who are unable to work owing to sickness. Insured persons should also be made entitled to receive free medical aid from the commencement of

illness until the expiry of the benefit period. The expenses of the scheme are to be met both by the employers and workers. On June 1, 1973, Convention Nos. 24 and 25 were in force respectively in 22 and 17 countries of the world. The Medical Care and Sickness Benefits Convention (No. 130), 1969 provides higher standards for the medical care and sickness benefits.

*(c) Invalidity, Old Age and Survivors' Insurance*

In 1933, the International Labour Conference adopted a series of Conventions dealing with the minimum conditions that ought to be complied with by every scheme of compulsory invalidity, old age and survivors' insurance. These are: the Old-Age Insurance (Industry, etc.) Convention (No. 35), the Old-Age Insurance (Agriculture) Convention (No. 36), the Invalidity Insurance (Industry etc.) Convention (No. 37), the Invalidity Insurance (Agriculture) Convention (No. 38), the Survivors' Insurance (Industry etc.) Convention (No. 39) and the Survivors' Insurance (Agriculture) Convention (No. 40). All the Conventions provide that the right to pension may be conditional upon successful completion of a qualifying period which may also involve payment of a minimum number of contributions. The expenses of the schemes are to be met by insured workers, employers and public authorities. The Invalidity, Old-Age and Survivors' Insurance Recommendation (No. 43), 1933 lays down the details of the scheme. The Convention (Nos. 35-40) were subsequently revised by the Invalidity, Old-Age and Survivors' Benefits Convention (No. 128), 1967.

*(d) Unemployment Provision*

The Unemployment Provision Convention (No. 44), 1934 deals with unemployment insurance, the scheme of which may be compulsory, voluntary or a combination of both. The scheme, as laid down in the Convention, has to provide for the payment of unemployment benefit on the satisfaction of certain conditions, if necessary. The duration of benefit may be limited to a period which is not normally to be less than 156 working days per year. The Unemployment Provision Recommendation (No. 47), 1934 deals with the scheme of unemployment insurance.

*(e) Broader forms of Social Security*

The International Labour Conference has recently devoted

attention to the broader forms of social security and has adopted a few Conventions and Recommendations for developing an integrated programme of social security in the Member States. The Social Security (Minimum Standards) Convention (No. 102), 1952, deals with nine different branches of social security including medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. The Convention prescribes minimum standards of each of the mentioned branches of social security in relation to the range of persons protected, conditions of the right to receive the benefit, the rate and duration of benefits. The ratifying countries are authorised to maintain at least three out of the nine branches of social security. On June 1, 1973, the Convention was in force in 22 countries of the world.

The Income Security Recommendation (No. 67) and the Medical Care Recommendation (No. 69) both adopted in 1944 deal with income security and medical care, respectively. Recommendation (No. 67) suggests the establishment of an organisation for income security consisting of a unified social insurance system. Such an organisation should function in cooperation with medical and unemployment services and should also be supplemented by a system of social assistance. Recommendation (No. 69) deals with various methods of organising a comprehensive system of medical care which is ultimately to cover the entire population. The Equality of Treatment (Social Security) Convention (No. 128), 1962, in force in seven countries (on June 1, 1973), deals with equality of treatment in extending social security benefits.

## (6) Industrial Relations

From its inception, the I.L.O. has given attention to the question of freedom of association and harmonious industrial relations. A number of studies covering the problems of freedom of association, collective bargaining, conciliation and arbitration and methods of labour management co-operation have been made. Besides, a few Conventions and Recommendations have also been adopted on these subjects. The relevant Conventions are: the Right of Association (Agriculture) (No. 11), 1921, the Freedom of Association and Protection of the Right to Organise (No. 87), 1948 and the Right to Organise and Collective Bargaining (No.

98), 1949. The Recommendations include: the Collective Agreements (No. 91), 1951, the Voluntary Conciliation and Arbitration (No. 92), 1951, and the Co-operation at the Level of the Undertaking (No. 94), 1952.

Convention No. 11, which, on June 1, 1973, was in force in 89 countries of the world including India, deals with the right of association of agricultural workers and requires the ratifying countries to secure to all agricultural workers the same right of association and combination as to industrial workers. The existing Indian legislation embodying the provisions of the Convention is the Indian Trade Unions Act, 1926. Convention No. 87 lays down that workers and employers shall have the right to establish and to join organisations of their own choosing without any previous authorisation. The organisations are to be left free to frame their constitutions and rules, to form a scheme of administration and to formulate their programmes and the public authorities are required to refrain from making any interference. It also affirms their right to establish joint confederation and to affiliate with international organisations. On June 1, 1973, the Convention was in force in 80 countries of the world, but India has not ratified it.

Convention No. 98, in force in 93 countries (on June 1, 1973), deals with the principles of right to organise and bargain collectively. It provides that workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment and recommends the adoption of measures to encourage and promote voluntary negotiations between employers and workers' organisations for regulating terms and conditions of employment by means of collective agreements. On June 1, 1973, the Convention was in force in 93 countries of the world. However, India has not ratified it.

Recommendation Nos. 91 and 92 deal with the creation of a machinery for negotiating, conducting, revising and renewing collective agreements, and provide for the establishment of machinery to help in voluntary conciliation of industrial disputes. Recommendation No. 94 relates to consultation and co-operation between employers and workers at the level of the undertaking, primarily on matters of mutual interests which are not otherwise covered under collective bargaining or dealt with by the machinery created for the determination of terms and conditions of employment.

**(7) Employment and Unemployment**

A number of Conventions and Recommendations deal with problems of assuring suitable employment to old workers. These primarily concern with employment offices, recruitment of certain types of labour under equitable conditions and reduction of unemployment.

**(a) Employment Offices**

The Unemployment Convention (No. 2), 1919, the ratification of which has now been denounced by India, provides for the establishment of a system of free public employment agencies as one of the measures against unemployment. The Employment Service Convention (No. 88), 1948 deals with the maintenance of free public employment service consisting of a national system of local and regional employment offices under the direction of a national authority. The Fee-charging Employment Agencies Convention (No. 34), 1933, subsequently revised by Fee-charging Employment Agencies (Revised) Convention (No. 96), 1949, provides for the abolition of fee-charging employment agencies which are conducted for profit, and for proper supervision of those not conducted for profit. On June 1, 1973, Convention No. 2 was in force in 47 countries, Convention No. 88 in 54, Convention No. 34 in 10, and Convention No. 96 in 32 countries. Only Convention No. 88 has been ratified by India.

The Employment Service Recommendation (No. 72), 1944 and the Employment Service Recommendation (No. 83), 1948 deal respectively with the functions of employment service in the transition from war to peace, and the maintenance of a free public employment service.

**(b) Forced Labour**

The Forced Labour Convention (No. 29), 1930, which, on June 1, 1973, was in force in 106 countries of the world including India, provides for the abolition of forced labour in all its forms. However, so long as forced or compulsory labour is not abolished, it is the duty of the relevant countries to prevent its use for private profit, to use it only during period of essential necessity and to provide for the protection and welfare of any worker so employed. The Forced Labour (Indirect Compulsion) Recommendation

(No. 35), 1930 and Forced Labour (Regulation) Recommendation (No. 36), 1930 supplement the provisions of the Convention.

(c) *Public Works Policy*

The Unemployment Recommendation (No. 1), 1919, the Public Works (National Planning) Recommendation (No. 51), 1937, and the Public Works (National Planning) Recommendation (No. 73), 1944 deal with problems of public works policy adopted as a measure for the creation of employment opportunities. Recommendation No. 1 suggests co-ordination in the execution of all work undertaken under a public authority with the purpose of reserving such work for periods of unemployment and for areas mostly affected by it. Recommendation No. 51 mainly recommends the adoption of appropriate measures to achieve a suitable timing of all works undertaken or financed by public authorities including an increase in the volume of such works during depression. Recommendation No. 73 deals with the public works policy during transition from war to peace.

(8) *Conditions of Employment at Sea*

The I.L.O. has given special attention to the conditions of employment of seamen. A number of Conventions and Recommendations deal exclusively with various aspects of working conditions of seamen. These relate to the questions of hours of work, wages, facilities for finding employment, seamen's articles, employment of young persons, officers' competency certificates, annual holidays with pay, sickness and unemployment insurance, ship owners' liability, repatriation of seamen and social security.

(a) *Conditions of Entry*

The Conventions concerning conditions of entry of seamen are: (i) the Minimum Age (Sea) Convention (No. 7), 1920, revised in 1936 by Convention No. 58, (ii) the Minimum Age (Trimmmers and Stockers) Convention (No. 15), 1921, (iii) the Medical Examination of Young Persons (Sea) Convention (No. 16), 1921, (iv) the Medical Examination (Seafarers) Convention (No. 73), 1946, (v) the Officers' Competency Certificates Convention (No. 73), 1936, and (vi) the Certification of Able Seamen Convention (No. 74), 1946. Convention Nos. 15 and 16 have been ratified by India.

The Vocational Training (Seafarers) Recommendation (No. 77), 1946 suggests the organisation of vocational schooling for prospective seafarers.

*(b) Conditions of Employment*

A number of Conventions and Recommendations relate to articles of agreement, hours of work, holidays with pay, food and catering for crews on board ship, crew accommodation on board ship, minimum wages, provision to crews by shipowners of bedding, mess utensils and other articles and general principles for the inspection of the conditions of work of seamen. The relevant Conventions are the following:

(i) The Hours of Work and Manning (Sea) Convention (No. 57), 1936 subsequently revised by Convention Nos. 76 (1945), 93 (1949) and 109 (1958);

(ii) The Holidays with Pay (Sea) Convention (No. 54), 1936, subsequently revised by Convention Nos. 72 (1946), and 91 (1949);

(iii) The Seamen's Articles of Agreement Convention (No. 22) 1926;

(iv) The Food and Catering (Ships' Crews), Convention (No. 68), 1946;

(v) The Accommodation of Crews Convention (No. 75), 1946, revised by Convention (No. 92), 1949; and

(vi) The Accommodation of Crews Convention (Supplementary Provisions) (No. 135), 1970.

Convention No. 22 is also in force in India. The Labour Inspection (Seamen) Recommendation (No. 28), 1926 calls for the establishment of inspection services in order to enforce legislation concerning seamen.

*(c) Social Security*

Conventions dealing with the social security exclusively for seaman include: (i) the Unemployment Indemnity (Shipwreck) Convention (No. 8), 1920, the Shipowners' Liability (Sick and Injured Seamen) Convention (No. 55), 1936, the Sickness Insurance (Sea) Convention (No. 56), 1936, the Social Security (Seafarers) Convention (No. 70), 1946, and the Seafarers Pensions Convention (No. 71), 1946.

Other Conventions and Recommendations concerning seamen are: the Placing of Seamen Convention (No. 9), 1920, the Repatriation of Seamen Convention (No. 23), 1926, the Repatriation (Shipmasters and Apprentices) Recommendation (No. 27), 1926 and Seamen's Welfare in Ports Recommendation (No. 48), 1936. Separate Conventions and Recommendations have been adopted in respect of fishermen.

#### DIFFICULTIES IN THE ADOPTION OF CONVENTIONS AND RECOMMENDATIONS

As has been mentioned earlier, Conventions and Recommendations of the I.L.O. seek to prescribe and indicate internationally uniform minimum labour standards. The purpose is to see that the labour standards in the Member countries are not below the ones prescribed by the I.L.O. As the Member countries of the I.L.O. are at different stages of economic growth and industrial advancement, the capacity to maintain and preserve labour standards differs from country to country, depending upon their relative economic prosperity. Some of the countries are extremely poor, economically and technologically backward having, therefore, very poor labour standards, and are incapable of securing any immediate improvement in the same. On the other hand, there are highly industrially advanced countries with national income sufficiently large enough to ensure equally high labour standards. There are many countries at the intermediate stage of economic development.

The result of this uneven economic development on the world scale presents the main hindrance to the adoption of a Convention or Recommendation laying down a minimum labour standard. What may be too high for economically backward and poor countries may perhaps be too low for the rich countries. A Convention or Recommendation seeking to bring about a significant improvement in labour standards runs the risk of being unrelated to the prevailing labour standards and beyond the economic and administrative capacity of many countries. A Convention or Recommendation has to gain acceptance from the Member countries if it is to be effective in achieving its purposes. The Convention which seeks to provide really high labour standards will fail to secure accept-

ance and what may succeed in securing acceptance, may not in reality be able to prescribe high labour standards. It is a dilemma which has confronted the I.L.O. since its very inception.

Thus, Conventions and Recommendations, if they are to be of real weight in the establishment of internationally uniform labour standards, "must strike an appropriate balance between the ideal and the immediately practicable and between precision and flexibility."<sup>20</sup> It is creditable that the I.L.O. has been able to adopt 136 Conventions dealing with diverse aspects of labour inspite of contradictory pressures pulling in different directions.

### PROBLEMS OF RATIFICATION

The process of evolving internationally uniform minimum labour standards does not end with the adoption of a Convention or Recommendation. A Convention has to secure ratification from the appropriate authorities in the Member States. A country ratifying a Convention undertakes an international obligation with other Member States to put into effect the provisions of the Convention by legislative or other appropriate measures. It is, therefore, pertinent here to examine the difficulties which face some of the Member countries in ratifying I.L. Conventions.

As on June 1, 1973, there were 135 Member States and 136 Conventions adopted by the I.L.O. with the total number of ratifications coming to 3,923. Thus, the average ratifications per Convention per country come to nearly 29. As many as 71 countries have ratifications below the average of 29. There are 24 countries each having less than 10 ratifications to their credit. France and Spain have ratified 94 Conventions each, the highest on record. None of the Conventions has succeeded in securing cent per cent ratification. The highest number of ratifications (i.e. 106) has been secured by Convention No. 29 on Forced Labour.

However, it is pertinent to mention here that the impact of the I.L.O. on international labour standards or labour standards in a particular country should not be judged by the number of ratifications that a country has to its credit or by the number of ratifications that a Convention has secured. There are many countries which are in agreement with the principles incorporated

20. I.L.O., *The International Labour Code, 1951*, Vol. I., p. LXXIII.

in many of the Conventions and have sought to implement them either wholly or partly, through legislative or other appropriate administrative measures and still have not ratified those Conventions. Therefore, it is appropriate to examine the difficulties which some of the Member States experience in formally ratifying these Conventions. These Member countries may, for the sake of convenience, be grouped under the following heads:

- (i) countries with higher labour standards;
- (ii) countries having a federal set-up;
- (iii) countries where the subject matters of the Conventions are regulated by collective agreements;
- (iv) non-metropolitan territories; and
- (v) industrially backward countries.

### **(1) Countries with Higher Labour Standards**

Countries having standards of labour higher than those envisaged under International Labour Conventions experience a special problem of ratification. In such countries, acceptance of Conventions prescribing standards lower than the existing ones may involve considerable political effort as there is obviously little interest in the subject. Besides, it is feared that the approval given to lower minimum standards will impair the authority of the higher national standards. In cases where ratification of a Convention necessitates a change in the law of the land, legal difficulties are also encountered. Although the ratification of an International Labour Convention does not imply undermining of the higher national standards, many countries have experienced the above-mentioned difficulties in according a formal ratification to many of the Conventions. Attempts have, however, been made to remove these difficulties by providing "no prejudice" clause in the Conventions and other measures. Nevertheless, the number of ratifications of the Conventions in many countries (with a few exceptions) having comparatively higher labour standards, still continues to be small.

### **(2) Countries Having a Federal Set-up**

The application of Conventions by countries having a federal set-up also involves difficulties owing to the division of the legislative and executive authorities between the federal government and

the constituent units. The national authority which is immediately expected to pursue the implementation of the provisions of a Convention finds itself constitutionally handicapped, as in many cases, the subject falls under the jurisdiction of the constituent units. The extent of such a difficulty, however, varies from State to State depending upon variations in the distribution of the authority between the federal government and the federating units. Where constituent units have been given comparatively greater autonomy, ratification of Conventions becomes more difficult. On the whole, the number of ratifications of Conventions by federal States has been small. It is on account of these reasons that the Constitution of the I.L.O. imposes certain additional obligations on the Federal States in regard to ratification of Convention.<sup>21</sup>

### **(3) Countries where Subject Matters of Conventions are Regulated by Collective Agreements**

In some countries having highly developed industrial organisations, many issues forming the subject matter of International Labour Conventions are traditionally decided by collective agreements between employers and trade unions and the State deliberately refrains from making any interference. It is presumably due to this reason that the Constitution of the I.L.O. makes room for the application of Conventions by collective agreements also. However, in many cases it is very difficult for the competent national authority to enforce the provisions of a Convention on the parties without destroying their freedom to bargain collectively, which ultimately means involving still wider problems of industrial relations. This is particularly true in cases where collective agreements provide for standards higher than those established by the Conventions. Moreover, even when the competent national authority succeeds in persuading the parties to enter into agreement in accordance with the provisions of a Convention, there is still the problem of ensuring the acceptance of obligation for a substantial period of time, as many terms of collective agreements are changed at frequent intervals. Besides, the levels at which collective agreements are reached (e.g. plant, industry, regional, etc.) also create further difficulties.

21. See pp. 668-669.

#### **(4) Non-Metropolitan Territories**

It has been mentioned earlier that Member States of the I.L.O. are also responsible for applying a Convention ratified by them to the non-metropolitan territories for whose international relations they are responsible, except where the subject matter of the Convention is within the self-governing powers of the territory or the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions. Most of the non-metropolitan territories are not sufficiently developed so as to apply the international standards immediately without modifications. As such, it often becomes difficult to apply the provisions of a Convention ratified by a Member State to its under-developed non-metropolitan territories. Besides, difficulties are also encountered in applying a Convention to a non-metropolitan territory having self-governing powers. In such cases, the Member State concerned is required to bring the Convention to the notice of the government of the territory whose consent must be obtained before a formal declaration accepting the obligations in respect of that Convention by the Member State is communicated to the I.L.O. Difficulties of this nature are similar to those experienced by States having a federal set-up.

However, the problem of the application of Conventions and Recommendations to non-metropolitan territories is not as acute today as was the case in 1919, when the I.L.O. was established. The 'colonial' territories under foreign rule were euphemistically called 'non-metropolitan' territories rather than 'colonial' countries by the I.L.O. Today, almost all the non-metropolitan territories have become independent States and as such are the Members of the United Nations and the I.L.O. and they take their independent decisions in regard to the ratification of a Convention.

#### **(5) Industrially backward Countries**

Economically and industrially backward countries have generally very poor labour standards and they often find it very difficult to bring about any immediate improvement in the same. Although the International Labour Conventions which create only minimum standards are adopted after a thorough investigation

into and with due regard to the stages of economic and industrial development of different Member States, the standards so established often seem burdensome to many extremely poor and economically backward countries. These countries find it very difficult to ratify Conventions prescribing high labour standards. The ratification of Conventions which are in keeping with the prevailing labour standards does not involve many difficulties.

#### • CONVENTIONS RATIFIED BY INDIA

An attempt has already been made in the foregoing discussions to give an idea of the more notable Conventions ratified by India and important legislative measures adopted to implement the same. A list of all the Conventions ratified by India, the dates of registration of their ratification and important legislative and other measures adopted to implement their provisions is given in Table 37.

TABLE 37

**International Labour Conventions ratified by India and important legislative or other measures adopted to implement their provisions**

<i>Convention No.</i>	<i>Name of the Convention</i>	<i>Date of registration of ratification</i>	<i>Existing legislative or other measures embodying the provisions of the Convention</i>
1	2	3	4
1.	Hours of Work (Industry) Convention, 1919	14.7.1921	Factories Act, 1948; Mines Act, 1952.
4.	Night Work (Women) Convention, 1919	17.7.1921	Factories Act, 1948; Mines Act, 1952.
41.	Night Work (Women) Convention (Revised), 1934	22.11.1935	No longer in force as Convention No. 89 on the same subject has been ratified.
89.	Night Work (Women) Convention (Revised), 1948	27.2.1950	Factories Act, 1948; Mines Act, 1952.
5.	Minimum Age (Industry) Convention, 1919	9.9.1955	Factories Act, 1948; Mines Act, 1952; Motor Transport Workers Act, 1961; Employment of Children Act, 1938.
6.	Night Work of Young Persons (Industry) Convention 1919,	14.7.1921	"

1	2	3	4
90.	Night Work of Young Persons (Industry) Convention (Revised), 1948	27.2.1950	Factories Act, 1948; Mines Act, 1952; Motor Transport Workers Act, 1961; Employment of Children Act, 1938.
11.	Right of Association (Agriculture) Convention, 1921	11.5.1923	Trade Unions Act, 1926.
14.	Weekly Rest (Industry) Convention, 1921	11.5.1923	Factories, Act, 1948; Mines Act, 1952; Motor Transport Workers Act, 1961.
15.	Minimum Age (Trimmers and Stockers) Convention, 1921	20.11.1922	Merchant Shipping Act, 1958.
16.	Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922	Merchant Shipping Act, 1958.
18.	Workmen's Compensation (Occupational Diseases) Convention, 1925	30.9.1927	Workmen's Compensation Act, 1923; Employees' State Insurance Act, 1948.
42.	Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.1.1964	"
19.	Equality of Treatment (Accident Compensation) Convention, 1925	30.9.1927	Laws concerning compensation for accidents i.e. Workmen's Compensation Act, 1923 and Employees' State Insurance Act, 1948 do not discriminate between nationals and foreigners.
21.	Inspection of Emigrants Convention, 1926	14.1.1928	Administrative orders.
22.	Seamen's Articles of Agreement Convention, 1926	30.10.1952	Merchant Shipping Act, 1958.

26.	Minimum Wage Fixing Machinery Convention, 1928	10.1.1955	Minimum Wages Act, 1948; Administrative orders.
27.	Marking of Weight (Packages Transported by Vessel) Convention, 1929	7.9.1931	Marking of Heavy Packages Act, 1951.
29.	Forced Labour Convention, 1930	30.11.1954	Constitution of India.
32.	Protection Against Accidents (Dockers) Convention (Revised), 1932	10.2.1942	Indian Dock Labourers Act, 1934.
45.	Underground Work (Women) Convention 1935	25.3.1938	Mines Act, 1952.
80.	Final Articles Revision Convention, 1946	17.11.1947	Concerns organisational matters of the I.L.O.
116.	Final Articles Revision Convention, 1961	22.6.1962	"
81.	Labour Inspection Convention, 1947	7.4.1949	"
			Protective labour laws e.g. Factories Act, 1948, Mines Act, 1951, Shops and Establishments Acts, Motor Transport Workers Act, 1961, Minimum Wages Act, 1948, Payment of Wages Act, 1936 provide for labour inspection.
88.	Employment Service Convention, 1948	24.6.1959	Administrative orders.
100.	Equal Remuneration Convention, 1951	25.9.1959	Constitution of India; Administrative orders.
107.	Indigenous and Tribal Population Convention, 1957	29.9.1958	Constitution of India; Administrative orders.

1	2	3	4
111.	Discrimination in respect of Employment and Occupation Convention, 1958	3.6.1960	Constitution of India.
118.	Equality of Treatment of Nationals and Non-nationals in Social Security Convention, 1962	19.8.1964	Laws concerning social security in India do not discriminate between nationals and non-nationals.

## **CHAPTER 27**

### **THE 20-POINT SOCIO-ECONOMIC PROGRAMME**

The amelioration of the socio-economic conditions of the weaker and poorer sections of the society is the central theme of the 20-Point Socio-Economic Programme as announced on July 1, 1975 by the then Prime Minister of India, Mrs. Indira Gandhi. Therefore, the effective implementation of the programme in all its aspects will certainly have a powerful impact on the working and living conditions of all sections of the Indian working class also. However, four of the twenty points (nos. 4, 6, 15 and 20) are of direct concern to labour. These are:

1. Bonded labour, wherever it exists, will be declared illegal. (Point 4).
2. Review of laws on minimum agricultural wages. (Point 6).
3. New schemes for workers' association in industry. (Point 15).
4. New apprenticeship schemes to enlarge employment and training specially of weaker sections. (Point 20).

A period of about a year and a half has elapsed since the announcement of the programme and both the Central and State Governments have been active in implementing it. A review can now be made of the measures adopted for the implementation of the programme and the progress achieved under separate heads.

## BONDED LABOUR

Point 4 of the programme declared, "*Bonded labour, wherever it exists, will be declared illegal.*"

The bonded labour system is said to have been prevalent in India from times immemorial. Under this system, the landlord advances loan in cash or kind to the agricultural labourer and demands free service or service on nominal wages from the latter as long as the loan is not repaid. In practice, the loanee is rarely in a position to pay back the loan and thus remains bonded to the landlord. In most cases, a bonded labourer has to give service life-long, and not infrequently, his heirs have to inherit the obligation to serve the master.

The system of bonded labour did not receive a very serious concern till recently owing partly to the acceptance of the system as a normal feature of the agricultural society and partly to the lack of general interest in the matter. Even the Indian Constitution, which abolished forced labour, could not visualise the magnitude of the problem of the bonded labour system in operation in the country. However, by and by, a widespread prevalence of the system was detected by the agencies concerned with the conditions of agricultural labourers, particularly those belonging to scheduled castes and scheduled tribes. The Commissioner for Scheduled Castes and Scheduled Tribes, who is appointed directly by the President and whose constitutional responsibility is to keep a watch over the progress made by the scheduled castes and scheduled tribes, pointedly referred again and again to the existence of the bonded labour system. He had also been recommending the adoption of positive measures for the elimination of this evil system.

The bonded labour system is said to have existed under different names and in different forms in different States. The more significant forms in which it came to exist are: *gothi*, *halia* and *muliya* in Orissa; *mahidari* and *harwashee* in Madhya Pradesh; *sagri* in Rajasthan; *mat*, *khundit-mundit*, *sanjayat*, *sewak* and *haris* in U.P.; *jeetha* in Mysore; *vet* or *begar* in Maharashtra; *jana*, *manjhi* or *ijhari* in Jammu & Kashmir; *valoorkaru*, *panam* or *nilpu panam* in Kerala; *gothi*, *jeetha*, *palitnam* or *palerus* in Andhra

Pradesh; *nit majoor* in West Bengal; *harwais*, *baramasiyas* and *kamia* in Bihar; *pannyal* in Tamil Nadu; *hali* in Gujarat; and *seri* or *sanji* in the Punjab.<sup>1</sup>

### Legislative measures preceding the Bonded Labour System (Abolition) Ordinance, 1975

Even prior to the promulgation of the Ordinance, some legislative and administrative measures for the control, regulation and prevention of the bonded labour system were in operation in a few States. Most of these measures were, however, general in character and only a few were concerned directly with the bonded labour system. Thus, the Bihar and Orissa Kamiauti Agreements Act, 1920 declared the agreements entered into between Kamias and their masters void unless "(i) full terms of the agreement were duly embodied in a document, (ii) a copy of the document was given to the Kamia, if the period of the agreement exceeded one year, (iii) the Kamia's remuneration under the agreement was fair and equitable, and (iv) his liability was completely extinguished within the terms of the agreement." The Act, however, remained a dead letter. Later, the Bihar Moneylenders Act, 1938 regulated moneylending transactions and granted relief to the debtors. The Act was general in character and was applied with certain amendments in the scheduled areas by the Bihar Scheduled Areas Regulation, 1959.

The Orissa Debt Bondage Abolition Regulation, 1948, which originally applied to the partially Excluded Areas of the State, dealt with debt bondage among a few tribals. The Orissa Debt Bondage Abolition Rules, 1963 framed under the Act of 1948, required the registration of all labour agreements in the office of the S.D.O. or other authority appointed by the State Government. The Rules also provided for a periodic check up of whether the labourers were actually paid in accordance with the terms and conditions fixed and for the fixation of a fair and equitable remuneration for the labourers.

1. Based on the *Annual Reports of the Commissioner for Scheduled Castes and Scheduled Tribes*; and the *Report of the National Commission on Labour, 1969*.

The Madras Debt Bondage Abolition Regulation, 1940 declared all "*gothi*" agreements as void. The Regulation permitted labour agreements if copies of the agreements were filed with the State Government and the remuneration agreed was fair and equitable. The period of such an agreement was not to exceed one year. The Regulation also prescribed the maximum rate of interest to be charged. A similar Regulation is in force in Andhra Pradesh. The A.P. Government also scaled down the debts incurred by the tribals before January 1, 1961 by a Regulation.

In Rajasthan, the Sagri System Abolition Act, 1961 abolished the *sagri* system in the State. Some other notable legislative measures were: the Bombay Money lenders Act, 1946, the Laccadive, Minicoy and Amindivi Islands (Debt Conciliation and Grant of Loans) Regulation, 1964 and the Laccadive, Minicoy and Amindivi Islands Land Revenues and Tenancy Regulation, 1965. The Kerala Government had also prepared a draft Bill titled "The Bonded Labour System (Abolition) Bill, 1972." The legislative measures were in some cases also supplemented by certain economic and social welfare measures.

These legislative measures proved inadequate in removing the various disabilities suffered by the bonded labourers. Only the State of Kerala had drafted a comprehensive Bill in 1972 covering the various aspects of the system. The main reason for the absence of effective legislative measures in the States appears to have been lack of knowledge or sharp division of opinions regarding the prevalence of the system in a particular area. The State Governments, therefore, did not take the problem very seriously. Steps were taken only when particular cases were brought to the knowledge of the authorities. Of late, considerable protests against the existence of the system were expressed in the Parliament and State legislatures. The Prime Minister had taken a very serious note of the prevalence of the system and moved by humanitarian considerations she had included the abolition of the system in all its remnants in the 20-Point Programme, which ultimately led to the promulgation of the Bonded Labour System (Abolition) Ordinance, 1975. The Ordinance was subsequently replaced by an Act of the same name in 1976.

## **The Bonded Labour System (Abolition) Act, 1976**

The Bonded Labour System (Abolition) Act, 1976 which replaced the Ordinance of 1975 abolishes the bonded labour system and frees every bonded labourer from the obligation to render any bonded labour. The Act prohibits any person from making any advance under or in pursuance of the bonded labour system and from compelling any person to render any bonded labour or other form of forced labour. Any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of the Act) by virtue of which any person or any member of his family or his dependant is required to do any work or render any service as bonded labourer is void and inoperative.

### *Extinguishment of the liability to repay Bonded Debt*

The Act extinguishes every obligation of a bonded labourer to repay any bonded debt which has remained unsatisfied before the commencement of the Act. The courts and other authorities are prohibited from entertaining any suit or proceeding for the recovery of the bonded debt. An unsatisfied decree or order for the recovery of the bonded debt passed before the commencement of the Act is deemed to have been satisfied on the commencement of the Act. The attachment of the property of a bonded labourer for the recovery of the bonded debt remains vacated. The property of bonded labourer forcibly taken over by a creditor is to be restored to him. Similarly, his property under mortgage, charge, lien or other incumbrances in connection with any bonded debt stands free.

A person who has been freed and discharged under the Act of any obligation to render any bonded labour is not to be evicted from any homestead or other residential premises which he was occupying before the commencement of the Act. The creditors are also prohibited from accepting any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the passing of the Act.

*Implementing Authorities*

The State Government is empowered to confer necessary powers on a District Magistrate for carrying out the provisions of the Act. The District Magistrate may delegate his powers to any subordinate authority under him. The District Magistrate or the other specified authority is required to endeavour to promote the welfare of the freed bonded labourer by securing and promoting his economic interests so that he may not have any occasion or reason to contract a further bonded debt. He is also required to inquire whether any bonded labour system or any form of forced labour under his jurisdiction is being enforced by any person of the locality and to take suitable action to eradicate its enforcement, if detected.

*Vigilance Committee*

The Act provides for the constitution of a vigilance committee at the district and sub-divisional levels. The vigilance committee is required to perform the following functions:

- (a) to advise the District Magistrate or any officer authorised by him as to the efforts made, and action taken, to ensure that the provisions of the Act or any rules made thereunder are properly implemented;
- (b) to provide for the economic and social rehabilitation of the freed bonded labourers;
- (c) to coordinate the functions of rural banks and co-operative societies with a view to canalising adequate credit to the freed bonded labourer;
- (d) to keep an eye on the number of offences of which cognizance has been taken under the Act;
- (e) to make a survey as to whether there is any offence of which cognizance ought to be taken under the Act; and
- (f) to defend any suit instituted against a freed bonded labourer or a member of his family or any person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt.

A vigilance committee is empowered to defend a suit against a freed bonded labourer and the member so authorised is to be

deemed to be the authorised agent of the freed bonded labourer. When a debt is claimed by a bonded labourer, the burden of proof that such debt is not a bonded debt lies on the creditor.

Efforts are being made all over the country to implement the provisions of the Act in the right earnest. A number of surveys have been conducted in different parts of the country with a view to identifying the pockets where the bonded labour system is suspected to be prevalent. The Commissioner for Scheduled Castes and Scheduled Tribes, the National Institute of Labour and other research institutes have also assisted the State authorities in the conduct of these surveys. For ensuring an effective implementation of the Act, Vigilance Committees have been set up at district and sub-divisional levels in different States. According to government agencies, by the middle of January 1977, as many as 89,198 bonded labourers were identified, out of whom, 88,618 were freed and 21,230 of these were rehabilitated.

The rehabilitation measures undertaken in the country comprise: providing jobs to such labourers in on-going schemes; settlement of land to them; special assistance for land improvement; supply of seeds, equipments, bullocks, etc.; and augmenting their income by the development of poultry, goat-rearing etc. Efforts have also been made to get the assistance of the I.L.O. and the Swedish International Agency under their special programme.

### **The social and economic hurdles**

As a matter of fact, the pattern of employer-employee relationships in agriculture has come to be conditioned by a constellation of deep-rooted social, economic and cultural factors. It is well-known that most of the agricultural labourers in the country have traditionally belonged to the lower castes and tribes i.e. the *Sudra*. The *Sudra*, who was said to have sprung from the feet of the deity, was allotted the function of serving the higher castemen—the *Brahmans*, the *Kshatriyas* and the *Vaisyas*. It was up to the master to provide for his sustenance and he was denied the right to strive for entering new functional fields or achieve advanced social position. According to Manu, "The king should carefully compel *Vaisyas* and *Sudras* to perform the work prescribed for them; for if these two castes swerved from their duties, they would throw

this whole world into confusion.”<sup>2</sup> He further maintains, “A *Sudra*, whether bought or unbought, may be compelled to do servile work; for he was created by the self-existent to be the slave.... A *Sudra*, though emancipated by his master, is not released from servitude; since that is innate in him, who can set him free from it?”<sup>3</sup> The attitudes of inequality were not only strongly impressed upon the culture, but they were binding for the Hindus. These attitudes, however, did not involve social conflict nor were they always imposed by physical coercion by some ruling power, rather they were a part of the ideological conditioning of the society under which even the servile-most *Sudras* came to accept their positions and obligations as a part of the godordained scheme of things.

The sanctions of the caste system have, no doubt, lost much of their rigours, still the impact of the traditional stigma and disabilities can be found in greater or smaller degree all over the country even to-day, particularly in the rural areas. When this phenomenon is studied in combination with the doctrines of *Karma* and *Rebirth* which have also profoundly influenced the thinking of the Hindus, one can easily get an explanation of the mute submission of the agricultural labourers to the authority of their employer/moneylenders, who have generally belonged to higher castes. Thus, one of the basic factors accounting for the helplessness of the agricultural labourers, whether bonded or attached, is the disability emanating from the caste system reinforced by the all-pervading doctrine of *Karma*. The pains of poverty and the hardships of arduous physical labour have come to be accepted as ordained by the gods and flowing from the deeds or misdeeds of the previous lives. There is no murmur, no grumbling, not to speak of any revolt, save and except cursing their lots or seeking to do such acts which would secure an escape from these trials and tribulations in the life to come after death. Economic helplessness, social subjugation and ideological enslavement all conspire to condemn these helpless victims to their lot.

An equally significant factor influencing the pattern of rela-

2. *Manusmiriti* VII, p. 418.

3. *Ibid.*, pp. 413-414

tionship in agricultural employments has been the authoritarian nature of the Indian society. Apart from the hierarchical order of the caste, subjugation to authority has also emanated from the operation of the feudal or zamindari system, influence of religious priests and their prescriptions, economic imbalances and concentration of power in social institutions. As a result of the impact of these influences, the agricultural labourers have become accustomed to subjugation to authority and they have found it very difficult to have an independent existence of their own, unhindered and unchecked by the dominance of others. They are thus forced by the realities of the situation to leave themselves at the mercy of their masters for mere existence. Although, with the abolition of the feudal or zamindari system, advent of democracy, and initiation of measures of social and economic reforms, the authoritarianism of the Indian rural society has been dwindling, yet the inertia of the past attitudes and practices still persists on a wide scale.

In view of what has been stated above, it was natural for the landlord to become not only the employer of his labourer, but also his master, leader, guardian, instructor, moneylender and benefactor. The agricultural labourer could not think of an existence independent of his master. The dire economic needs of the labourer and his family members forced him to enter into a permanent relationship with his employer, the terms of which were generally dictated by the master who took advantage of the economic helplessness of the labourer and the favourable social sanctions.

The bonded labour system being a social evil perpetuated by deep-rooted social customs and traditions and economic and political exploitation cannot be cured by legislative measures alone. In order to ensure its permanent eradication, it is necessary to attack the economic and social structure which breeds and perpetuates this bondage. Tinkering with the system here and there may alleviate the suffering to some extent but will not eliminate it.

Besides a vigorous implementation of the law, it is desirable to adopt the following measures to curb and eliminate the prevalence of bonded labour:

- (a) provision of short-term and long-term credit to the agricultural labourers;
- (b) measures to raise their repaying capacity by improving their earnings;
- (c) provision of agricultural and homestead land to these labourers;
- (d) provision of irrigation facilities, seeds and fertilisers at cheap rates;
- (e) introduction of large-scale horticulture and animal husbandry programmes;
- (f) mass publicity and propaganda, preferably with the help of audio-visual devices; and
- (g) provision of adult literacy, education and training facilities in crafts for agricultural labourers.

#### REVIEW OF LAWS CONCERNING MINIMUM AGRICULTURAL WAGES

Point 6 of the 20-Point Socio-Economic Programme emphasised the *review of laws on minimum agricultural wages* with a view to ameliorating the conditions of agricultural workers.

The main legislation providing for the fixation and revision of minimum wages for agricultural workers as also of those employed in other sweated trades or industries in the country is the Minimum Wages Act, 1948. A review of this legislation showed that the Act was sufficiently strong enough to provide for adequate legal minimum wages to the agricultural labourers. Therefore, the directives of the 20-Point Programme have been sought to be achieved by a more vigorous implementation of the Act, upward revision and fixation of minimum wages for the agricultural workers and the gearing up of the enforcement machinery.

After the announcement of the 20-Point Programme, minimum wages for agricultural wages have been suitably revised and fixed in almost all the States and Union Territories. In many cases, the employers have been required to provide meals or pay cash in lieu of meals, in addition. The revised rates of wages have generally been given wide publicity in order to enable the agricultural labourers to know about their rights of minimum wages

and other benefits. Side by side, steps have been taken to strengthen the enforcement machinery so that agricultural workers are actually in receipt of the statutory rates and benefits. In general, the personnel of labour departments function in close collaboration with the personnel of the Revenue Departments. District-level implementation committees have also been set up in most of the States. Besides, in order to ensure public cooperation, State-level advisory committees have been constituted in different States.

In many States, the statutory power to register trade unions of agricultural workers has been delegated to the Labour Superintendents or other similar district-level officials of the Labour Department for encouraging unionisation among agricultural workers. Special training camps have also been organised to train trade union workers working among the agricultural workers.

### WORKERS' PARTICIPATION

#### Workers participation in industry at Shop floor and plant levels

In pursuance of the mandate under Point 15 of the 20-Point Programme for the introduction of new schemes of workers' association in the industry, the Government of India framed a scheme for "Workers' Participation in Industry at Shop floor and Plant levels" on 30th October, 1975. It was stated "...it is only by providing for such arrangements for workers' participation particularly at the shop floor and the unit level that the involvement of workers in the effective functioning of the unit and in improving production and productivity can be ensured." The Scheme is to be implemented through executive action in the first instance. Legislation is to be considered after adequate experience has been gained in the matter. The salient features of the Scheme are given below.

The Scheme<sup>4</sup> applies to the units of manufacturing and mining industries in the public, private and cooperative sectors as well as to those run departmentally, employing 500 or more workers. The

4. This Scheme is for the most part in continuation of the Scheme of Joint Councils of Management evolved in 1958, a detailed discussion of which has already been made at pp. 330-338 of this book.

Scheme provides for the establishment of Shop Councils at the shop/departmental levels and Joint Councils at the enterprise level.

### Shop Councils

The employer of every industrial unit employing 500 or more workmen is required to constitute a Shop Council for each department or shop, or one Shop Council for more than one department or shop, keeping in view the number of workers employed in different departments or shops.

### *Composition and Meetings*

A Shop Council is to consist of an equal number of representatives of employers and workers. The employers' representatives are to be nominated by the management from amongst the persons from the units concerned. The representatives of workers are to be from amongst the workers actually engaged in the department or shop concerned. The number of Shop Councils and the departments to be attached to each Council of the undertaking or establishment is to be decided by the employer in consultation with the recognised union or registered trade unions or with workers, as the case may be. The number of members of each Council is to be determined by the employer in consultation with the recognised or registered trade union or workmen in a manner best suited to the local conditions obtaining in the unit, but the total number of members is in general not to exceed twelve. In view of the existence of different practices in different industrial units, the Scheme did not prescribe a uniform pattern of the constitution of Shop Councils, particularly in respect of the representation of workers. The management in consultation with the workers is to evolve the most suitable pattern of representation so as to ensure that the "representation of workers results in effective, meaningful and broad-based participation of workers."

The decisions of the Shop Councils are to be on the basis of consensus and not by a process of voting. However, either party may refer an unsettled matter to the Joint Council for consideration. The decisions of a Shop Council are to be implemented by the parties normally within a period of one month. A decision of a Shop Council having a bearing on another shop or the under-

taking or the establishment as a whole is to be referred to the Joint Council for consideration and decision. A Shop Council is to function for a period of two years. The meetings of a Shop Council are to be held as frequently as are necessary but at least once in a month. The Chairman of the Shop Council is to be a nominee of the management, and the Vice-Chairman is to be elected by the worker members from amongst themselves.

### *Functions*

A Shop Council is required "in the interest of increasing production, productivity and overall efficiency of the shop/department" to attend to the following matters:

- (1) Assist management in achieving monthly/yearly production targets;
- (2) Improvement of production, productivity and efficiency, including elimination of wastage and optimum utilisation of machine capacity and manpower;
- (3) Specifically identify areas of low productivity and take necessary corrective steps at shop level to eliminate relevant contributing factors;
- (4) To study absenteeism in shops/departments and recommend steps to reduce them;
- (5) Safety measures;
- (6) Assist in maintaining general discipline in the shop/department;
- (7) Physical conditions of working, such as lighting, ventilation, noise, dust, etc., and reduction of fatigue;
- (8) Welfare and health measures to be adopted for efficient running of the shop/department; and
- (9) Ensure proper flow of adequate two-way communication between the management and the workers, particularly on matters relating to production figures, production schedules and progress in achieving the targets.

### **Joint Councils**

A Joint Council is to operate for the industrial unit as a whole. The composition of the Joint Council, the period of its

operation, and the decision-making process are similar to those applicable to a Shop Council. In a Joint Council, the chairman is to be the chief executive of the unit. One of the members of the Joint Council is to be appointed as its secretary. A Joint Council is to meet at least once in a quarter. The decision of the Joint Council is to be implemented within one month, unless otherwise stated in the decision itself.

### *Functions*

A Joint Council is to deal with the following matters:

- (1) Optimum production, efficiency and fixation of productivity norms of man and machine for the unit as a whole;
- (2) Functions of a Shop Council which have a bearing on another Shop or the unit as a whole;
- (3) Matters emanating from Shop Councils which remain unresolved;
- (4) Matters concerning the unit or the plant as a whole in respect of matters relating to work planning and achieving production targets; more specifically, tasks assigned to a Shop Council at the shop/department levels but relevant to the unit as a whole will be taken up by the Joint Council;
- (5) The development of skills of workmen and adequate facilities for training;
- (6) The preparation of schedules of working hours and of holidays;
- (7) Awarding of rewards for valuable and creative suggestions received from workers;
- (8) Optimum use of raw materials and quality of finished products; and
- (9) General health, welfare and safety measures for the unit or the plant.

The Scheme also emphasised the need for an effective two-way communication and exchange between the management and the workmen. It would only be then that "the workers would have a better appreciation of the problems and difficulties of the undertaking and of its overall functioning." Each unit was, there-

fore, expected to devise a suitable system of communication within the undertaking. The Works Committees set up under the Industrial Disputes Act, 1947 are to continue to function as usual.

### **Scheme for workers' participation in management in commercial and service organisations having large-scale public dealings**

In view of an encouraging response to the Scheme at the shop floor and plant levels in the manufacturing and mining units, the Government of India decided to extend the idea of workers' participation to commercial and service organisations in the public sector having large-scale public dealings with a view to rendering better customer service. The commercial and service organisations to be covered under the Scheme include: hospitals; posts and telegraph offices; railway stations/booking offices; government provident fund/pension organisations; road transport corporations; State Electricity Boards; banks; insurance; institutions like Food Corporation of India, Central Warehousing, State Warehousing Corporations; public distribution system such as ration/fair price shops, super bazars; all financial institutions; research institutions; distribution, commercial and marketing organisations of oil companies; air and inland water transport; shipping lines, ports and docks; Handicrafts and Handloom Exports Corporation; State Trading Corporation; MMTC; Commercial and Training Organisations of the Central and State Governments; municipal services; milk distribution services; irrigation systems; tourist organisations; public hotels and restaurants; and establishments of public amusements, etc.

The basic objective of the Scheme is to devise "a system whereby mutual trust and confidence are created between the workers and the management which would help promote active involvement of the workers in the work process. It would also motivate the workers to put in their best efforts through greater job satisfaction so as to render better customer service." It was realised that "the success of the scheme would primarily depend upon the extent of realisation on the part of the management that the workers can also contribute significantly for affecting improvements in

the work process and also on the initiative and interest that may be taken by it in encouraging workers' participation." The Scheme, which is also to be implemented through executive action to begin with, is to be flexible and is to be evolved at the initiative of the management keeping in view the nature of each unit. However, the Councils envisaged under the Scheme are not to acquire the role of bargaining committees.

The Scheme is to be applied to the lowest units of commercial/service organisations in the public sector employing 100 or more persons. An organisation/service is, however, free to apply the scheme to its units employing less than 100 workers. The Scheme provides for the constitution of Unit Council at the unit levels and Joint Councils at the divisional/regional/zonal levels or in particular branches as considered necessary. The desirability of setting up an apex body for the entire organisation or service may be considered after experience has been gained in the working of the Unit or Joint Councils.

### **Unit Councils**

A Unit Council is to be set up in each unit of the organisation/service employing 100 or more persons to discuss day-to-day problems and find solutions. Wherever necessary, a composite Council may be formed to serve more than one unit or a Council may be set up departmentwise to suit the particular needs of an organisation/service. The details concerning composition of the Unit Council, the decision-making process, the procedure for implementing the decisions, the reference of an unresolved question to the Joint Council, and the selection of chairman and vice-chairman are similar to those applicable in respect of the Shop Councils set up for manufacturing and mining industries under the original Scheme.

### **Functions**

The main functions of the Unit Councils are the following:

- (1) To create conditions for achieving optimum efficiency, better customer services in areas where there is direct and immediate contact between the workers at the operational

level and output including elimination of wastage and idle time and optimum utilisation of manpower by joint involvement in improving the work system;

- (2) To identify areas of chronically bad, inadequate or improper service and to take necessary corrective steps to eliminate the contributing factors with a view to evolving improved methods of operations;
- (3) To study absenteeism and recommend steps to reduce it;
- (4) To maintain discipline in the unit;
- (5) To eliminate pilferage and all forms of corruption and to institute a system of rewards for this purpose;
- (6) To suggest improvements in physical conditions of working such as lighting, ventilation, dust, noise, cleanliness, internal lay-out of counters, setting up of kiosks and customer service points, etc;
- (7) To ensure proper flow of adequate two-way communication between the management and the workers, particularly matters relating to the service to be rendered, fixation of targets of output and progress in achieving these targets;
- (8) To recommend and improve safety, health and welfare measures for efficient running of the unit; and
- (9) To discuss any other matters which may have a bearing on the improvement of performance of the unit for ensuring better customer service.

### **Joint Councils**

A Joint Council is to be formed at every division/regional zonal level or in a particular branch of an organisation/service if considered necessary. The details concerning the composition, tenure, conditions of membership, selection of chairman, appointment of secretary, frequency of meetings, and decision-making process of a Joint Council are similar to those of the Joint Council formed for industrial undertakings. The number of Joint Councils to be set up for different types of services rendered is to be decided by the organisation/service concerned in consultation with the recognised union, registered unions or the workers, as the case may be.

*Functions*

The functions of the Joint Councils in the commercial and service organisations are the following:

- (1) Settlement of matters which remain unresolved by the Unit Councils and arranging joint meetings of two or more Unit Councils for resolving inter-council problems;
- (2) Review of the working of the Unit Council for improvement in the customer service and evolving methods for the best way of handling of goods, traffic, accounts, etc;
- (3) Unit level matters which have a bearing on other branches or on the enterprise as a whole;
- (4) Development of skills of workmen and adequate facilities for training;
- (5) Improvement in the general conditions of work;
- (6) Preparation of schedule of working hours and holidays;
- (7) Proper recognition and appreciation of useful suggestions received from the workers through a system of rewards; and
- (8) Discussion of any matter having a bearing on the improvement of performance of the organisation/service for ensuring better customer service.

The general guidelines pertaining to the composition, need for and effective communication and the functioning of the Works Committees where in operation are the same as those applicable to the Joint Councils in the manufacturing and mining industries.

As in January 1977, there were as many as 762 Shop/Joint Councils in operation in the manufacturing and mining industries, out of which, 155 were in the public, 548 in the private and 59 in the cooperative sectors. An assessment of the working of these Councils is not possible at this early stage.

**APPRENTICESHIP SCHEME**

As stated earlier, Point 20 of the 20-Point Programme provided for the "introduction of new apprenticeship scheme to enlarge employment and training specially of the weaker sections."

Prior to the declaration of this policy statement, Apprentice-

ship Schemes were in operation in the country either under the Apprentices Act, 1961 or under the voluntary schemes of government and individual employers. A number of Industrial Training Institutes had also been functioning in the country imparting training in different trades and crafts.

The Apprentices Act, 1961, which is intended to provide for the regulation and control of training of apprentices, deals with various aspects of apprenticeship training. In particular, the provisions of the Act relate to: qualification for being engaged as apprentices; the contract of apprenticeship; period of apprenticeship training; number of apprentices for designated trades; practical and basic training of apprentices; obligations of apprentices and employers; remuneration to apprentices; their health, safety and welfare, hours of work, overtime, leave and holidays; compensation for injury; conduct and discipline; settlement of disputes; offer and acceptance of employment; and authorities for the administration of apprenticeship training. A notable amendment of 1973 provided for the reservation of seats for persons belonging to scheduled castes and scheduled tribes.

No fresh legislation has taken place in pursuance of the 20-Point Programme and its mandates were sought to be implemented by amendments of the rules and executive action. In view of the directives of the 20-Point Programme, the number of designated trades have been increased; the minimum rates of stipends have been enhanced; new seats have been located and intake improved. The number of apprentices belonging to scheduled castes and scheduled tribes has also been considerably increased. Besides, special drives have been launched to ensure proper utilisation of training facilities for scheduled castes and scheduled tribes in the Industrial Training Institutes.

## APPENDIX 1

Number and Membership of Trade Unions, and Employment in Selected Industries in  
India and Their Indices (1952, 1957, 1963 and 1968)

(For indices, base year 1952=100)

Industry	1952			% of			1957			% of		
	Trade union		Membership	Employment		workers	Trade union		Membership	Employment		workers
	No.	(No. in 000's)	(No. in 000's)	No. in 000's	(No. in 000's)	organised	No.	Index in 000's	Index in 000's	No.	Index in 000's	organised
1. Plantations	47	165	1,245	13	136	289	279	169	1,274	102	22	
2. Coal mining	59	90	349	26	69	117	164	183	370	106	44	
3. Food, beverages and tobacco	298	148	541	27	627	210	292	197	675	125	43	
4. Cotton textile	168	310	767	40	224	133	261	84	841	110	31	
5. Jute textile	55	86	293	29	55+	100	50+	59	257	88	20	
6. Paper and paper products	15	8	28	29	37	267	16	204	34	123	47	
7. Printing, publish- ing and allied trades	86	27	79	35	199	231	44	162	91	116	48	
8. Leather and leather products	20	8	14	56	34	170	8	97	21	148	37	
9. Rubber products	11	6	24	26	35	318	12	190	31	128	38	

10. Chemicals and chemical products	90	38	89	43	170	189	53	139	106	119	50
11. Non-metallic mineral products	73	37	147	25	165	226	68	184	152	103	45
12. Basic metal indus- tries	67	49	101	48	110	164	92	190	120	119	76
13. Metal products	47	11	65	17	113	240	39	355	86	133	45
14. Machinery (general)	46	13	94	14	100	217	29	216	142	151	20
15. Machinery (electrical)	12	3	31	11	34	283	11	317	47	150	24
16. Transport equip- ment	10	7	207	3	19	190	10	126	298	144	3
17. Railways	56	366	932	39	52	93	264	72	1,063	144	26
18. Post and tele- graph	7	64	212	30	9	129	40	63	287	135	14

## Appendix 1 (Contd.)

1953

Trade union		Membership		Employment		% of workers organised
No. in 000's	Index	No. in 000's	Index	No. in 000's	Index	
130	277	326	198	1,190	96	27
97	164	277	309	451	129	61
788	264	332	224	767	142	43
391	233	466	150	835	109	56
44	80	63	73	258	88	24
62	413	21	266	49	176	43
240	279	45	166	116	149	39
44	220	25	313	26	182	92
45	409	24	379	49	200	49
347	386	154	405	176	198	88
259	355	93	251	220	150	42
183	288	133	271	230	228	58
210	447	68	618	176	272	39
211	458	70	530	258	274	27
98	817	37	1,057	122	934	30
59	590	52	741	404	195	13
70	125	423	116	1,217	130	35
6	86	52	82	427	201	12

## Appendix 1 (Contd.)

1968

Trade union		Membership		Employment		% of workers organised
No.	Index	No. in 000's	Index	No. in 000's	Index	
140	298	422	256	994	80	42
101	171	237	263	395	113	60
909	305	343	232	791	146	43
526	313	544	175	821	107	66
43	78	45	52	238	81	19
83	553	30	375	62	214	48
272	316	54	200	130	165	42
47++	235	23++	282	26	186	89
66	600	19	317	63	263	30
423	470	103	271	226	254	45
307	420	107	289	266	181	40
266	397	200	408	266	263	40
211	449	69	627	204	314	34
300	652	124	954	333	354	37
149	1,242	67	2,233	176	568	38
94	940	92	1,314	468	226	20
95	170	675	184	1,368	147	49
6	117	36	56	520	245	15

Source: Various issues of Govt. of India, *Indian Labour Statistics and Indian Labour Year Book*.

+ Figures relate to the year 1960-61.

++ Figures relate to the year 1966.

Notes: (1) Wherever available, the indices have been calculated on the exact figures. (2) The figures of number of trade unions and their membership pertain only to the trade unions furnishing returns under the Indian Trade Unions Act, 1926. (3) The employment figures in respect of manufacturing factory establishments pertain only to such establishments which furnished returns under the Factories Act, 1948.

## APPENDIX 2

Number of Workers' Unions on Register, Unions Submitting Returns and Membership of Unions  
Submitting Returns by States (1956-57—1965)

State	1956-57				1957-58				1958-59			
	No of unions on register	No. of unions sub- mitting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on register	No. of unions submit- ting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on register	No. of unions submit- ting returns	No. of unions on register	No. of unions submit- ting returns	Member- ship of unions submit- ting returns (000's)	Member- ship of unions submit- ting returns (000's)
1. Andhra Pradesh	548	129	82	565	193	106	578	262	578	262	178	178
2. Assam	149	54	175	136	50	73	137	89	137	89	248	248
3. Bihar	532	386	309	539	406	318	565	428	565	428	371	371
4. Bombay	1,566	848	480	1,658	1,020	601	1,724	1,023	1,724	1,023	613	613
5. Kerala	584	577	241	1,213	823	355	1,538	909	1,538	909	374	374
6. Gujarat	—	—	—	—	—	—	—	—	—	—	—	—
7. Maharashtra	—	—	—	—	—	—	—	—	—	—	—	—
8. Madhya Pradesh	247	64	29	283	92	45	313	84	313	84	62	62
9. Madras	719	518	235	804	658	315	943	746	943	746	384	384
10. Mysore	223	223	114	408	201	108	403	188	403	188	109	109
11. Orissa	116	73	48	119	75	71	138	60	138	60	45	45
12. Punjab	379	142	37	397	213	61	434	234	434	234	57	57
13. Rajasthan	220	106	23	212	112	24	—	140	—	140	40	40

14. Uttar Pradesh	881	620	277	932	595	259	955	652	243
15. West Bengal	2,033	409	178	2,300	780	471	1,973	867	733
16. Delhi	254	206	141	264	213	187	302	233	216
17. Himachal Pradesh	—	—	—	9	3	4	12	12	3
18. Tripura	26	15	6	20	17	7	27	16	8
19. Andaman & Nicobar Islands	—	—	—	9	9	4	9	9	3
20. Pondicherry	—	—	—	—	—	—	—	—	—
21. Manipur	—	—	—	—	—	—	—	—	—
Total	8,447	4,370	2,373	9,868	5,460	3,006	10,071	5,952	3,635

## Appendix 2 (Contd.)

State	1959-60				1960-61				1961-62				1962-63			
	No. of unions on register	No. of union sul- mitting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on regis- ter	No. of unions submit- ting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on regis- ter	No. of unions submit- ting returns	No. of unions on regis- ter	No. of unions submit- ting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on regis- ter	No. of unions submit- ting returns	Member- ship of unions submit- ting returns (000's)	No. of unions on regis- ter	No. of unions submit- ting returns (000's)
1.	548	181	76	598	162	125	519	253	546	328	129	546	328	129	546	328
2.	157	79	207	147	81	227	138	43	138	99	250	138	99	250	138	99
3.	608	474	377	642+	488+	371+	632	505	617	537	387	617	537	387	617	537
4.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
5.	1,650	869	321	1,815	837	256	1,842	877	1,680	796	262	1,680	796	262	1,680	796
6.	479	335	201	477	356	203	455	350	487	346	199	487	346	199	487	346
7.	1,342	818	617	1,376	817	577	1,397	812	1,460	894	596	1,460	894	596	1,460	894
8.	392	114	55	330+	92+	31+	379	87	425	102	37	425	102	37	425	102
9.	993	796	379	1,107	859	407	1,178	836	1,164	764	377	1,164	764	377	1,164	764
10.	459	185	104	442	185	90	504	215	500	293	104	500	293	104	500	293
11.	120	73	55	103	59	53	116	82	123	92	76	123	92	76	123	92
12.	547	178	44	550	248	63	614	382	589	418	83	589	418	83	589	418

13.	125	125	37	191	169	43	235	182	49	245	195	47
14.	1,029	826	284	1,009	825	326	961	853	326	1,058	951	291
15.	1,850	1,134	917	1,987	1,250	1,007	2,091	1,167	834	2,156	950	598
16.	308	264	224	309	251	210	314	270	239	357	300	267
17.	12	12	3	13	13	2	14	14	3	16	16	4
18.	30	15	7	37	12	7	13	13	7	35	16	7
19.	7	7	2	12	9	2	14	13	2	14	12	3
20.	—	—	—	—	—	—	—	—	—	—	—	—
21.	—	—	—	—	—	—	—	—	—	—	—	—
Total	10,656	6,485	3,910	11,145	6,708	4,000	11,416	6,954	3,960	11,610	7,109	3,666

## Appendix 2 (contd.)

1963-64				1964-65				1965			
No. of unions on register	No. of unions submitting returns	Membership of unions submitting returns (000's)	No. of unions on register	No. of unions submitting returns	Membership of unions submitting returns (000's)	No. of unions on register	No. of unions submitting returns	No. of unions on register	No. of unions submitting returns	Membership of unions submitting returns (000's)	Membership of unions submitting returns (000's)
1. 499	369	177	793	456	233	573	470	573	470	246	246
2. 144	30	49	173	87	249	184	68	184	68	123	123
3. 631	534	378	669	539	416	663	529	663	529	397	397
4. —	—	—	—	—	—	—	—	—	—	—	—
5. 1,616	657	197	1,720	573	150	1,686	231	1,686	231	63	63
6. 493	242	163	507	224	171	488	219	488	219	171	171
7. 1,561	945	801	1,793	1,021	925	1,986	1,058	1,986	1,058	779	779
8. 365	135	58	400	136	76	457	164	457	164	57	57
9. 1,354	742	393	1,272	696	373	1,308	788	1,308	788	329	329
						(Tamil Nadu)					
10. 305	305	142	395	291	141	463	209	463	209	108	108
11. 146	110	82	165	106	67	191	89	191	89	73	73
12. 652	383	73	643	435	107	682	416	682	416	101	101
13. 217	217	50	379	257	54	223	141	223	141	42	42
14. 1,133 <sup>e</sup>	1,039	334	1,195 <sup>e</sup>	1,116	422	1,215	992	1,215	992	356	356
15. 2,162	1,054	795	2,163	1,064	710	2,333	972	2,333	972	578	578
16. 368	292	248	370	305	323	386	339	386	339	315	315

17.	22	21	3	29	26	5	29	23	8		
18.	45	17	8	35	14	7	37	19	8		
19.	14	9	1	11	11	2	12	12	3		
20.	—	—	—	19	15	8	24	24	6		
21.	13	5	1	13	8	1	8	8	1		
Total 11,740				7,106	3,956	12,744	7,380	4,441	12,948	6,771	3,763

Source : Various Issues of Govt. of India, *Indian Labour Statistics*.

\* Estimated.

+ Includes the number of employers' unions on register, those submitting returns and their membership.

## APPENDIX 3

## Number of Industrial Disputes, Workers Involved, and Mandays Lost in India by States (1956-1 968)

State	1956			1957		
	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost
1. Andhra Pradesh	34	25,214	86,632	81	31,584	2,33,369
2. Assam	20	7,417	55,678	28	17,402	1,15,652
3. Bihar	89	40,437	5,09,159	116	80,811	9,62,277
4. Bombay	296	2,44,141	7,02,296	319	1,91,767	8,79,771
5. Jammu & Kashmir	—	—	—	—	—	—
6. Kerala	—	—	—	250	1,85,935	10,04,386
7. Madhya Pradesh	26	40,143	12,75,350	53	25,576	1,63,624
8. Madras	212	82,776	4,61,072	247	1,16,857	7,19,633
9. Mysore	—	—	—	93	49,954	3,65,309
10. Orissa	6	3,653	13,277	7	6,950	2,73,936
11. Punjab	36	9,718	57,819	13	4,864	6,114
12. Rajasthan	—	—	—	27	7,629	31,505
13. Uttar Pradesh	144	45,274	3,28,789	88	34,894	2,38,570
14. W. Bengal	241	2,00,078	34,52,644	231	1,16,048	13,41,364
15. A & N	—	—	—	3	3,590	43,050
16. Delhi	97	16,253	44,948	65	14,118	47,919
17. Himanchal Pradesh	—	—	—	—	—	—
18. Manipur	—	—	—	—	—	—
19. Tripura	—	—	—	9	1,392	2,840
20. Ajmer	2	76	4,376	—	—	—
Total	1,203	7,15,130	69,92,040	1,630	8,89,371	64,29,319

Appendix 3 (contd.)

State	1958				1959				1960			
	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of disputes	No. of workers involved	No. of mandays lost	No. of mandays lost
1.	59	25,121	99,742	90	42,405	3,34,794	70	32,603	2,34,096			
2.	24	17,826	67,132	27	15,019	39,918	29	17,016	76,045			
3.	138	86,237	9,77,110	127	45,288	3,23,888	91	29,465	2,00,654			
4.	254	2,26,160	13,24,741	299	1,99,681	6,64,244	288 <sup>a</sup>	2,93,074 <sup>a</sup>	10,54,036 <sup>a</sup>			
5.	2	440	4,560	9	443	3,101	4	274	27,590			
6.	209	1,09,479	10,73,753	128	35,402	2,93,262	242	1,57,355	10,57,519			
7.	60	18,069	1,51,300	67	15,555	2,00,302	84	34,871	1,36,627			
8.	237	90,765	7,42,964	200	86,788	10,53,267	211	1,90,304	7,50,189			
9.	72	41,745	4,16,260	78	56,274	3,11,265	80	24,181	42,812			
10.	12	8,490	1,56,268	10	13,757	4,54,827	9	14,396	1,11,680			
11.	14	3,956	10,148	21	4,258	11,479	15	3,580	54,633			
12.	25	6,491	78,512	29	7,320	1,03,427	24	6,077	28,317			
13.	101	15,910	1,14,492	80	14,817	1,52,900	60	22,563	83,265			
14.	269	2,64,706	25,36,247	330	1,42,767	16,42,735	311	1,53,878	26,06,698			
15.	2	2,126	19,188	4	1,730	5,013	6	1,470	39,059			
16.	44	10,603	20,264	26	8,780	27,966	30	1,761	11,735			
17.	—	—	—	1	110	660	—	—	—			
18.	—	—	—	—	—	—	—	—	—			
19.	2	442	4,454	5	1,222	10,100	—	—	—			
20.	—	—	—	—	—	—	—	—	—			
Total	1,524	9,28,566	77,97,585	1,531	6,93,616	56,33,148	1,556 <sup>b</sup>	9,82,868 <sup>b</sup>	65,14,955 <sup>b</sup>			

## Appendix 3 (contd.)

State	1961			1962		
	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost
1. Andhra Pradesh	69	35,157	2,01,465	81	44,733	1,69,612
2. Assam	28	12,081	72,009	25	15,777	29,214
3. Bihar	75	25,815	1,58,654	69	31,010	1,77,532
4. Gujarat	30	7,867	52,112	38	12,297	86,627
5. Haryana			Not Applicable			
6. Jammu & Kashmir	1	45	45	4	1,267	1,482
7. Kerala	146	35,506	3,95,315	201	99,053	21,38,491
8. Madhya Pradesh	83	22,724	2,15,920	57	20,409	2,57,206
9. Madras	124	32,654	1,75,789	128	23,909	1,57,675
10. Maharashtra	279	88,614	5,80,110	386	2,66,232	10,81,042
11. Mysore	71	30,582	80,895	78	32,128	67,928
12. Orissa	7	15,787	2,36,801	4	1,340	4,280
13. Punjab	8	574	7,206	17	4,147	28,114
14. Rajasthan	11	3,294	51,359	13	10,388	1,23,846
15. Uttar Pradesh	92	44,122	5,16,972	91	35,748	3,76,450
16. W. Bengal	275	1,52,123	21,43,538	234	94,117	13,56,260
17. A & N	3	273	797	16	7,106	30,728
18. Delhi	55	4,642	29,768	49	5,398	34,089
19. Goa	—	—	—	—	—	—
20. Himachal Pradesh	—	—	—	—	—	—
21. Manipur	—	—	—	—	—	—
22. Pondicherry	—	—	—	—	—	—
23. Tripura	—	—	—	—	—	—
Total	1,357	5,11,860	49,18,755	1,491	7,05,059	61,20,576

# Appendix 3 (contd.)

State	No. of disputes	1963				1964				1965			
		No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved
1.	92	31,061	1,44,629	106	67,697	5,17,135	109 <sup>e</sup>	24,720 <sup>c</sup>	109 <sup>e</sup>	24,720 <sup>c</sup>	2,03,859 <sup>c</sup>	109 <sup>e</sup>	24,720 <sup>c</sup>
2.	18	8,448	10,603	38	17,150	52,368	39	21,571	39	21,571	52,327	39	21,571
3.	62	23,191	80,289	104	62,164	5,36,716	78	19,760	78	19,760	2,51,474	78	19,760
4.	65	25,792	1,69,900	76	15,535	1,20,599	38	7,475	38	7,475	50,853	38	7,475
5.	1	65	195	Not applicable									
6.	145	34,421	1,71,961	210	78,707	8,68,734	200	1,56,110	200	1,56,110	8,68,690	200	1,56,110
7.	48	11,691	1,03,286	60 <sup>d</sup>	27,782 <sup>d</sup>	2,35,494 <sup>d</sup>	81	31,395	81	31,395	1,90,786	81	31,395
8.	191	52,015	4,34,756	236	77,978	4,44,552	137	47,749	137	47,749	3,77,790	137	47,749
9.	443	2,10,731	9,18,364	636	2,85,395	15,80,243	586	3,79,956	586	3,79,956	12,03,388	586	3,79,956
10.	68	25,644	74,703	110	53,431	2,17,393	75	59,657	75	59,657	7,26,777	75	59,657
11.	6	4,570	18,209	25	9,436	1,30,532	23 <sup>e</sup>	7,651 <sup>e</sup>	23 <sup>e</sup>	7,651 <sup>e</sup>	91,128 <sup>e</sup>	23 <sup>e</sup>	7,651 <sup>e</sup>
12.	13	3,527	29,849	46	5,822	61,087	26	4,106	26	4,106	54,120	26	4,106
13.	12	2,451	18,691	54	12,486	62,341	25	5,618	25	5,618	37,217	25	5,618
14.	95	41,144	1,23,623	171	78,227	7,35,317	115	45,696	115	45,696	4,47,391	115	45,696
15.	172	81,326	9,30,822	211	1,90,306	20,15,055	238	1,52,315	238	1,52,315	17,45,944	238	1,52,315
16.	2	98	430	9	2,382	11,658	6	1,006	6	1,006	1,522	6	1,006
17.	26	2,739	13,754	36	8,045	49,839	36	18,448	36	18,448	1,34,358	36	18,448
18.	5	3,545	17,530	17	8,717	78,455	12	3,201	12	3,201	27,882	12	3,201
19.	—	—	—	—	—	—	—	—	—	—	—	—	—
20.	—	—	—	—	—	—	—	—	—	—	—	—	—
21.	—	—	—	—	—	—	—	—	—	—	—	—	—
22.	7	662	6,930	3	398	2,228	5	1,158	5	1,158	3,663	5	1,158
23.	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	1,471	5,63,121	32,68,524	2,151	10,02,955	77,24,694	1,835 <sup>f</sup>	9,91,158 <sup>f</sup>	1,835 <sup>f</sup>	9,91,158 <sup>f</sup>	64,69,992 <sup>f</sup>	1,835 <sup>f</sup>	9,91,158 <sup>f</sup>

Appendix 3 (contd.)

1966						1967						1968					
	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of disputes	No. of workers involved	No. of mandays lost	No. of disputes	No. of workers involved	No. of mandays lost
1.	127	55,327	5,62,258	107	90,639	9,22,344	120	42,847	2,74,340								
2.	55	30,826	71,647	86	63,388	2,09,094	26	16,878	48,917								
3.	90	41,724	2,57,679	130	2,04,028	12,32,918	114	1,17,958	5,12,650								
4.	80	16,751	1,38,849	124	30,487	3,08,952	93	23,626	1,29,141								
5.	6	600	11,194	28	6,386	70,502	15	6,430	60,721								
6.	2 <sup>0</sup>	3,595 <sup>0</sup>	—	10	2,305	51,593	—	—	—								
7.	307 <sup>h</sup>	1,18,958	22,96,321	280	1,42,871	23,18,452	305	2,06,732	24,91,745								
8.	132	38,869	1,71,530	156	57,493	3,46,708	223	1,14,229	3,83,782								
9.	181	96,175	6,78,043	241	1,16,690	10,91,131	270	2,18,781	23,48,138								
(Tamil Nadu)																	
10.	810 <sup>h</sup>	5,41,051	36,93,294	721	3,15,735	22,01,519	647	3,13,330	16,96,869								
11.	107	82,880	5,23,366	103	37,251	2,54,476	117	77,809	6,55,050								
12.	13	15,239	17,704	24	19,181	1,25,644	29	14,634	1,65,101								
13.	50 <sup>h</sup>	22,955 <sup>h</sup>	3,15,374	32	24,326	2,70,965	28	11,579	62,325								
14.	39 <sup>h</sup>	11,710	49,953	44	9,117	62,724	43	10,548	67,164								
15.	169	1,17,992	9,94,937	183	91,350	15,25,943	184	60,216	6,46,447								
16.	284	1,87,018	38,12,861	457	2,43,686	59,24,743	454	3,97,237	73,43,706								
17.	7	1,779	1,913	8	848	4,396	10	4,009	31,991								
(Chandigarh)																	
18.	77	21,514	2,18,873	57	10,553	1,18,976	3	536	5,716								
19.	6	1,820	2,234	15	21,242	70,737	61	16,736	2,45,102								
20.	—	—	—	—	—	—	12	11,034	10,469								
21.	—	—	—	—	—	—	1	754	1,508								
22.	4	1,640	10,900	4	1,848	34,824	—	—	—								
23.	10	1,633	17,399	5	922	1,310	7	949	8,671								
							14	2,442	54,126								
Total	2,556	14,10,056	1,33,46,329	2,815	14,90,346	1,71,47,951	2,776	16,69,294	1,72,43,679								

*Notes: a.* Figures are for the composite Bombay State up to 30th April, 1960 and for Maharashtra State for the rest of the year. Figures for the State of Gujarat since its inception are 27, 3,400 and 21,562 respectively (for the eight months' period) but are excluded as these figures were received very late.

- b.* Exclusive of figures given above which were received very late.
- c.* The figures for the State sphere of Andhra Pradesh were subsequently revised by the State Government. The revised figures for the State as a whole are 133, 38,874 and 5,12,583, respectively.
- d.* The figures for the State sphere of Madhya Pradesh were subsequently revised by the State Government. The revised figures for the State as a whole are 62, 25,750 and 2,09,795, respectively. As such the revised all-India figures would be 2,153, 10,00,923 and 76,98,995, respectively.
- e.* The information excludes 51 work-stoppages involving 23,297 workers and resulting in a time-loss of 1,24,807 mandays in the State sphere of Orissa.
- f.* By inclusion of the additional figures in respect of Andhra Pradesh and Orissa (State sphere) as mentioned above, the revised all-India figures for the number of disputes, workers involved and mandays lost would be 1,910, 10,28,609 and 69,03,523, respectively.
- g.* The figures for Jammu and Kashmir have subsequently been revised by the State Government. The revised figures for the State as a whole are 5, 3,678 and 31,200, respectively.
- h.* Two all-India strikes occurring simultaneously in several States which occurred in July and November, 1966, respectively have been included in the States in which maximum number of mandays were lost, but the number of workers involved and mandays lost have been included in the concerned States. Figures within brackets indicate the all-India disputes which have not been included in the total number of disputes of the other affected States.
- i.* The figures relate to the composite Punjab up to 31st October, 1966 and to the reorganised State of Punjab from 1.11.1966. The figures also include those disputes which were continuing on 31.10.1966 although the establishments concerned came under Haryana on reorganisation.

## APPENDIX 4

States arranged in order in terms of Number of Industrial Disputes, Workers Involved, Mandays Lost (average for the period 1956-1968). Membership of Trade Unions submitting returns (average for the period 1956-1965) and Working Population (1961)

State	No. of industrial disputes			No. of workers involved		
	Average per year	% of total	Rank	Average per year (000's)	% of total	Rank
Maharashtra	563	30.6	1	300	31.1	1
W. Bengal	285	15.5	2	183	18.9	2
Kerala	219	11.9	3	113	11.7	3
Madras	201	10.9	4	95	9.8	4
Uttar Pradesh	121	6.6	5	50	5.3	6
Bihar	99	5.4	6	62	6.4	5
Andhra Pradesh	88	4.8	7	42	4.4	8
Mysore	88	4.8	8	48	5.0	7
Madhya Pradesh	87	4.7	9	35	3.6	9
Gujarat	68	3.6	10	17	1.9	11
Assam	34	1.8	11	20	2.1	10
Rajasthan	29	1.6	12	8	0.8	14
Punjab	25	1.3	13	8	0.8	13
Orissa	14	0.7	14	10	1.1	12
For the country	1,838	—	—	966	—	—

Appendix 4 (contd.)

No. of mandays lost		Membership of trade unions		Working Population	
Average per year (000's)	% of the total	Average per year (000's)	Rank	No. in 1961 (000's)	Rank
			% of the total		% of working population organised
1,619	19.1	708	19.3	18,948	3
2,834	33.4	682	18.6	11,580	7
1,248	14.7	244	6.6	5,630	13
726	8.6	348	9.5	15,352	6
483	5.7	312	8.5	28,850	1
475	5.6	370	10.1	19,235	2
306	3.6	160	4.3	18,663	4
311	3.7	116	3.2	10,726	8
295	3.4	49	1.3	16,929	5
132	1.6	188	5.1	8,475	10
67	0.8	172	4.6	5,137	14
60	0.7	41	1.1	9,584	9
75	0.9	71	1.9	6,344	12
138	1.7	65	1.8	7,662	11
8,470	—	3,670	—	1,88,676	—

Source : Computed on the basis of data published in various issues of Govt. of India, *Indian Labour Year Book*, and *Indian Labour Statistics* (see Appendices 2 and 3 also).

Notes : 1. The figures pertaining to number of disputes, workers involved and mandays lost in respect of Maharashtra and Gujarat are for the period 1961-1968, and those of Kerala, Mysore and Rajasthan are for the period 1957-68 (see Appendix 3).

2. The figures pertaining to membership of trade unions in respect of Maharashtra and Gujarat are for the period 1959-60—1965 (see Appendix 2).

## APPENDIX 5

Injuries deemed to result in Permanent Partial Disablement under  
Workmen's Compensation Act, 1923

<i>Description of injury</i>	<i>Percentage loss of earning capacity</i>
<b>Amputation cases—Upper limbs either arms</b>	
1. Amputation through shoulder joint	90
2. Amputation below shoulder with stump less than 8" from tip of acromion	80
3. Amputation from 8" from tip of acromion to less than 4½" below tip of olecranon	70
4. Loss of a hand or of the thumb and four fingers of one hand and amputation from 4½" below tip of olecranon	60
5. Loss of thumb	30
6. Loss of thumb and its metacarpal bone	40
7. Loss of four fingers of one hand	50
8. Loss of three fingers of one hand	30
9. Loss of two fingers of one hand	20
10. Loss of terminal phalanx of thumb	20
<b>Amputation Cases—Lower limbs</b>	
11. Amputation of both feet resulting in end bearing stumps	90
12. Amputation through both feet proximal to the metatarso-phalangeal joint	80
13. Loss of all toes of both feet through the metatarso-phalangeal joint	40
14. Loss of all toes of both feet proximal to the proximal inter-phalangeal joint	30
15. Loss of all toes of both feet distal to the proximal inter-phalangeal joint	20
16. Amputation at hip	90
17. Amputation below hip with stump not exceeding 5" in length measured from tip of great trochanter	80
18. Amputation below hip with stump exceeding 5" in length measured from tip of great trochanter but not beyond middle thigh	70
19. Amputation below middle thigh to 3½" below knee	60
20. Amputation below knee with stump exceeding 3½" but not exceeding 5"	50

<i>Description of injury</i>	<i>Percentage loss of earning capacity</i>
21. Amputation below knee with stump exceeding 5"	40
22. Amputation of one foot resulting in end-bearing	30
23. Amputation through one foot proximal to the metatarso-phalangeal joint	30
24. Loss of all toes of one foot through the metatarso-phalangeal joint	20
<b>Other injuries</b>	
25. Loss of one eye, without complications, the other being normal	40
26. Loss of vision of one eye, without complications of disfigurement of eyeball, the other being normal	30
<b>A. Loss of fingers of right or left hand</b>	
<b>Index finger</b>	
27. Whole	14
28. Two phalanges	11
29. One phalanx	9
30. Guillotine amputation of tip without loss of bone	5
<b>Middle fingers</b>	
31. Whole	12
32. Two phalanges	9
33. One phalanx	7
34. Guillotine amputation of tip without loss of bone	4
<b>Ring of little finger</b>	
35. Whole	7
36. Two phalanges	6
37. One phalanx	5
38. Guillotine amputation of tip without loss of bone	1
<b>B. Loss of toes of right or left foot</b>	
<b>Great toe</b>	
39. Through metatarso-phalangeal joint	14
40. Part, with some loss of bone	3

**Appendix 5 (contd.)***Description of injury**Percentage loss  
of earning  
capacity***Any other toe**

- |  |   |
|--|---|
| 41. Through metatarso-phalangeal joint | 3 |
| 42. Part, with some loss of bone       | 1 |

**Two toes of one foot, excluding great toe**

- |  |   |
|--|---|
| 43. Through metatarso-phalangeal joint | 5 |
| 44. Part, with some loss of bone       | 2 |

**Three toes of one foot excluding great toe**

- |  |   |
|--|---|
| 45. Through metatarso-phalangeal joint | 6 |
| 46. Part, with some loss of bone       | 3 |

**Four toes of one foot, excluding great toe**

- |  |   |
|--|---|
| 47. Through metatarso-phalangeal joint | 9 |
| 48. Part, with some loss of bone       | 3 |

## APPENDIX 6

Occupational Diseases deemed to be injuries under  
Workmen's Compensation Act, 1923

<i>Occupational disease</i>	<i>Employment</i>
<b>PART A</b>	
<b>Anthrax.</b>	(a) Involving the handling of wool, hair, bristles or animal carcasses, or parts of such carcasses, including hides, hoofs, and horns; or (b) In connection with animals infected with anthrax; or (c) Involving the loading, unloading or transport of any merchandise.
<b>Compressed air illness or its sequelae.</b>	Any process carried on in compressed air.
<b>Poisoning by lead tetra-ethyl.</b>	Any process involving the use of lead tetra-ethyl.
<b>Poisoning by nitrous fumes</b>	Any process involving exposure to nitrous fumes.
<b>Poisoning by organic phosphorus insecticides.</b>	Any process involving the use of handling or exposure to the fumes, dust or vapour containing any of the organic phosphorus insecticides.
<b>PART B</b>	
<b>Poisoning by lead, its alloys or compounds or its sequelae excluding poisoning by lead tetra-ethyl.</b>	Any process involving the handling or use of lead ore or lead or any of its preparations or compounds except lead tetra-ethyl.
<b>Poisoning by phosphorus or its compounds, or its sequelae.</b>	Any process involving the liberation of phosphorus or use or handling of phosphorus or its preparations or compounds.
<b>Poisoning by mercury, its amalgams and compounds, or its sequelae.</b>	Any process involving the use of mercury or its preparations or compounds.
<b>Poisoning by benzene, or its homologues, their amido and nitro-derivatives or its sequelae.</b>	Any process involving the manufacture, liberation, or use of benzene, benzene homologues and their amido and nitro-derivatives.

## Appendix 6 (contd.)

<i>Occupational disease</i>	<i>Employment</i>
Chrome ulceration or its sequelae.	Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium, or their preparations, or the manufacture of bichromate.
Poisoning by arsenic or its compounds, or its sequelae.	Any process involving the production, liberation or utilisation of arsenic or its compounds.
Pathological manifestations due to (a) radium and other radioactive substance. (b) X-rays.	Any process involving exposure to the action of radium, radio active substances of X-rays.
Primary epitheliomatous cancer of the skin.	Any process involving the handling of use of tar, pitch, bitumen, mineral oil paraffin, or the compounds, products, or residues of these substances.
Poisoning by halogenated hydrocarbons of the aliphatic series and their halogen derivatives.	Any process involving the manufacture, liberation and use of hydrocarbons of the aliphatic series and the halogen derivatives.
Poisoning by carbon disulphide or its sequelae.	Any employment in— (a) the manufacture of carbon disulphide; or (b) the manufacture of artificial silk by viscose process; or (c) rubber industry; or (d) any other industry involving the production or use of products containing carbon disulphide or exposure to emanations from carbon disulphide.
Occupational cataract due to infra-red radiations.	Any manufacturing process involving exposure to glare from molten material or to any other sources of infra-red radiations
Telegraphist's Cramp.	Any employment involving the use of telegraphic instruments.
Poisoning by manganese or a compound of manganese, or its sequelae.	Any process involving the use of, or handling of, or exposure to the fumes, dust or vapour of, manganese, or a compound of manganese, or a substance containing manganese.

## Appendix 6 (contd.)

<i>Occupational disease</i>	<i>Employment</i>
<b>PART C</b>	
Silicosis.	Any employment involving exposure to the inhalation of dust containing silica.
Coal Miners' Pneumoconiosis.	Any employment in coal mining.
Asbestosis.	Any employment in— (1) the production of: (i) fibro-cement materials, or (ii) asbestos mill board, or (2) the processing of ores containing asbestos.
Bagassosis.	Any employment in the production of bagasse mill board or other articles from bagasse.

## INDEX

- Adarkar, B.P., 555-557  
 Adarkar's Report, 555-557  
 Adjudication, *see* Compulsory arbitration  
 Adjudication award, 116, 237, 238, 277, 279-281, 283, 287, 289, 291, 293, 296, 305, 306, 339, 411, 412, 475, 480, 516, 517, 523, 530-538, 543, 544, 548, 589, 622  
 Agency shop agreement, 31, 57-58, 486-488, 491, 492  
 Agricultural Labour Enquiry Committee, 435  
 Agricultural Refinance Corporation, 520  
 Ahmad, Muzaffar, 96  
 Air Force Act, 1950, 519  
 Air India Corporation, 516, 520  
 Allen, V.L., 48, 48n  
 All India Bank Employees' Association, 122-123  
 All India Defence Employees' Federation, 168  
 All India Independent Trade Unions Congress, 139  
 All India Industrial (Bank Disputes) Tribunal, 516  
 All India Postmen and Lower Grade Staff Union, 118  
 All India Railwaymen's Federation, 43, 45, 100, 120, 167, 168, 340  
 All India Trade Union Congress, 23, 25, 45, 91-93, 99-101, 104, 106-109, 117, 119-124, 136-141, 168, 170, 175-177, 180, 180n, 181, 187, 188, 216, 223  
 All India Textile Workers' Conference, 99  
 All India Workers' and Peasants' Party, 97  
 Amalgamated Clothing Workers of America, 317  
 Amalgamated Society of Carpenters, 65  
 Amalgamated Society of Engineers, 63, 65  
 Amalgamated Society of Railway Servants (Great Britain), 69-70, 448, 450  
 Amalgamated Society of Railway Servants in India and Burma, 89  
 American Federation of Labour (AFL), 11, 24, 43, 92, 124, 185  
 American Federation of Labour-Congress of Industrial Organisation (AFL-CIO), 24, 43, 45  
 Apprentices Act, 1961, 725  
 Apprenticeship, 19, 38, 64, 164, 324, 333, 428, 476, 518, 674, 688, 711, 728-729  
 Approved Closed Shop, *see* Closed shop agreement  
 Arbitration, *see* Compulsory arbitration; Voluntary arbitration  
 Arbitration Act, 1824 (Great Britain), 475, 476

- Arbitration award, 269, 270, 290, 339, 478, 479, 481, 531-535, 684  
 Arbitration (Masters' and Workmen's) Act, 1872 (Great Britain), 475, 476  
 Army Act, 1950, 519  
 Ashley, Lord, 368n  
 Asiatic Labour Conference, 97  
 Assam Tea Plantations Employees' Welfare Fund Act, 1959, 645, 654  
 Assam Tea Plantations Provident Fund Scheme Act, 1955 558  
  
 Banker, Shankar Lal, 91  
 Bargaining agent, 76, 100, 209, 214, 216, 219, 220, 221, 225-228, 248, 302, 496-498, 548  
 Bargaining power, 7, 40, 55, 71, 157  
 Bargaining unit, *see* Collective bargaining, unit of Penham, 354  
 Bernstein, Irving, 27, 27n  
 Bharatiya Jan Sangh, 139, 180  
 Bharatiya Mazdoor Sangh, 139, 180  
 Bhore, Joseph, 555  
 Bihar and Orissa Kamiavti Agreements Act, 1920, 713  
 Bihar Central Standing Labour Advisory Board, 212-213  
 Bihar Labour Enquiry Committee, 104, 425, 554  
 Bihar Moneylenders Act, 1938, 713  
 Bihar Scheduled Areas Regulation, 1969, 713  
 Bihar Sugar Workers' Federation, 169  
 Birmingham Trades Council, 67  
 Black Death, 437  
 Blake, Francis, 198  
 Blanqui, 657  
 Board of Arbitration, 290, 478, 479, 550  
 Board of Trade, 476, 477  
 Bombay Industrial Disputes Act, 1938, 104, 269, 281, 282  
 Bombay Industrial Relations Act, 1946, 123, 210, 269, 295, 296, 547-549, 550  
 Bombay Labour Welfare Board, 653  
 Bombay Labour Welfare Fund Act, 1953, 644-645, 653-654, 656  
 Bombay Maternity Benefit Act, 1929, 552, 582, 584  
 Bombay Mill Hands' Association, 89  
 Bombay Money Lenders Act, 1946, 714  
 Bombay Millowners' Association, 113, 123  
 Bombay Shops and Establishments Act, 1939, 104  
 Bombay Strike Committee, 1928, 553  
 Bombay Textile Labour Enquiry Committee, 104, 426, 553  
 Bonded Labour, 363, 711, 712-720  
 Bonded Labour System (Abolition) Act, 1976, 714, 715-720  
 Bonded Labour System (Abolition) Ordinance, 1975, 713, 714, 715  
 Bonus, 19, 106, 113-115, 117, 123, 212, 231, 243, 244, 282, 301, 334, 337, 392, 411, 412, 557, 627, 628, 630, 631, 633-634, 635  
 Bonus Commission, 147  
 Bose, Subhas Chandra, 98  
 Boycott, 21, 26, 254, 255  
 Breach of Contract, 9, 18, 94, 441, 448, 449, 457, 460, 465, 475, 493, 504, 512, 513, 536  
 British Trades Union Congress, *see* Trades Union Congress Buchanan, D.H., 89n  
*Buckingham & Carnatic Mills V. Madras Labour Union*, 10, 94, 459-460  
 Bundhs, 246, 249  
  
 Casselman, P.H., 229n  
 Central Board of Workers' tion, 146, 301  
 Central Implementation and Evaluation Committee, 146, 301  
 Central Maternity Benefit Act, 1961, *see* Maternity Benefit Act (Central), 1961

- Central Minimum Wage Advisory Board, 147, 429, 434, 435
- Central Pay Commission (s), 119, 338, 340
- Centre of Indian Trade Unions (CITU), 45, 139, 180
- Certifying Surgeons, 378, 394, 396
- Chamberlain, Neil, 309
- Chamanlal, Diwan, 103
- Chartist movement, 61, 62-63
- Check-off, 159-161, 226
- Chester, T.E., 329, 329n
- Chief Inspector of Factories, 376, 378, 380, 384, 387, 388, 390, 397
- Chief Registrar of Trade Unions and Employers' Associations, 484, 485, 499-503
- Chinese Aggression, 1962, 145
- Clegg, H.A., 329, 329n
- Closed shop agreement, 31, 52, 55-58, 458, 489-492
- Coal Mines Bonus Scheme, 628, 630, 631-632, 633-634, 635
- Coal Mines Labour Welfare Fund Act, 1947, 124, 147, 366, 644, 645-649, 651
- Coal Mines Labour Welfare Fund Ordinance, 1944, 645
- Coal Mines Provident Fund and Bonus Schemes Act, 1948, 124, 365, 557, 558, 627, 628-634
- Coal Mines Provident Fund and Bonus Schemes Ordinance, 1948, 627
- Coal Mines Provident Fund Scheme, 628-633
- Code of Civil Procedures, 1908, 279, 418, 431, 523, 525, 527, 532
- Code of Conduct, 299
- Code of Discipline, 213-214, 270, 299
- Cole, G.D.H., 59, 60n, 62n
- Collective agreement(s), 237, 238, 270  
     defined, 18  
     in Great Britain, 18-22, 271, 293, 447, 486-492, 494-499, 504-507  
     in India, 18-22, 201, 208, 219, 226, 227, 276-277, 336, 341-345, 347, 548-549  
     in U.S.A., 18-22, 238, 271  
     legal enforceability of, 20-21, 275, 276-277, 483, 494-499, 508, 511  
     nature of, 18-22, 42, 201, 227, 268, 668, 697  
     registration of, 303  
     subject matters of, 18-22, 41, 42, 160, 226, 236, 238, 271, 294, 327, 406, 438, 441, 486-492, 494-499, 684, 691, 697, 703, 704  
     union security clauses in, 20, 28, 31, 51-58, 160, 236, 237, 486-492  
     (*see also* Agency shop agreement; Closed shop agreement; Maintenance of Membership shop agreement; Union shop agreement)
- Collective bargaining,  
     agents of, *see* Bargaining agents  
     and compulsory arbitration, 283-289  
     and labour-management co-operation, 310, 311, 337-338, 345-348  
     arguments against, 283-285  
     arguments for, 208, 285-289, 313  
     as a method of settling industrial disputes, 21, 266-269, 283-289, 302-303, 305, 334, 474, 475, 661, 680, 696, 697  
     as a trade union method, 15-22, 23, 24, 26, 47, 261, 283-289, 294  
     compulsory, 267, 271, 273-274  
     decision making process and, 19, 268, 310, 313-316, 317, 318  
     defined, 18  
     industrywide, 49, 168, 262, 301, 494  
     in Great Britain, 18-22, 77, 116, 209, 269, 289, 325, 438, 447, 457, 458, 474, 475, 482-483, 484, 486-492, 494-502, 503, 506, 507

- in India, 18-22, 77, 116, 154, 190, 200, 208, 209, 214, 219, 221, 225-228, 284-285, 288, 294, 301-303, 305, 548-549, 726
- in U.S.A., 18-22, 116, 172, 208-209, 248, 269, 273-274, 424-425
- unit of, 18, 19, 49, 208, 236, 496-498, 704
- Combination Acts, 1799 and 1800 (Great Britain), 9-10, 59-60, 438-439, 440, 460**
- Combination Acts, 1824 and 1825 (Great Britain), 60, 251, 440-441, 442, 460**
- Commission on International Labour Legislation, 658**
- Commissioner for Scheduled Castes and Scheduled Tribes, 712, 717**
- Commission on Industrial Relations (Great Britain), 484, 485, 486, 487-510**
- Common Law, 10, 59, 65, 93-94, 409, 439, 440, 441, 442, 446, 459, 460, 559-564**
- Commonwealth Conciliation and Arbitration Act (Australia), 277**
- Communist Party of India, 23, 96, 107, 108, 109, 120, 121, 139, 180, 180n, 181, 186**
- Communist Party of India (Marxists), 139, 180, 250n**
- Company unions, 192, 209**
- Compulsory arbitration, 271, 279-289**
  - and collective bargaining, 283-289
  - arguments against, 116, 283, 285-289
  - arguments for, 209, 242, 283-285
  - authorities/machinery for, 110, 111, 118, 122, 144, 190, 193, 204, 211, 226, 277, 280-283, 288, 291-296, 300, 302-307, 417, 472, 481, 482, 484-487, 501, 504-506, 508, 515-517, 521, 523, 525, 526, 528-538, 545, 548, 549, 550, 622
  - different forms of, 279-281
  - in Australia, 277, 280
  - in Great Britain, 289, 291-294, 474, 475, 480-482
  - in India, 25, 106, 110, 115-116, 117, 118, 122, 144, 243, 281-289, 295, 296, 302-307, 338, 417, 515-517, 521-535, 543-545, 547-550
  - in New Zealand, 277, 280
- Compulsory unionism, 51-58**
- Conciliation,**
  - and mediation, 242, 267, 268, 271, 274-275, 475
  - and settlement/agreement, 259, 276, 277, 286, 295, 296, 305, 411, 412, 477, 516, 520, 522-526, 536-538, 548, 549
  - as a method of settling industrial disputes, 242, 266, 267, 274-278, 289-290, 295, 515, 696
- Board of, 276, 290, 295, 296, 476, 477, 512-514, 516, 521, 523-526, 530, 536-537, 627**
- Commissioners, 277**
- Compulsory, 267, 271, 275-277, 294-296, 522-526, 536-537**
- Conference, 277**
- Council of, 277**
- defined, 268**
- in Australia, 277, 280**
- in Great Britain, 66, 277-278, 289-290, 475-480, 485, 495, 496, 505-508**
- in India, 144, 270, 275-278, 294-296, 303-307, 512-517, 522-526, 536-537, 543-544, 547-549**
- in New Zealand, 277**
- in U.S.A., 277-278**
- Officer(s), 276-278, 296, 305, 507-508, 514, 520-523, 525, 531, 536, 548**
- proceedings, 276, 515, 520, 522-526, 536-537, 543-544, 547-549**
- voluntary, 271, 274-275, 277-279, 474-480, 522-523, 547-548, 697**

- Conciliation Act, 1869 (Great Britain), 475  
 Conciliation Act, 1896 (Great Britain), 278, 289, 290, 476-477  
 Conditions of Employment and National Arbitration Order, 1940 (Great Britain), 291-292, 480  
 Confederation of British Industry, 486  
 Congress of Industrial Organisation (CIO), 43, 185  
 Conservative Party/Government, 32, 75, 454, 458, 483  
 Conspiracy and Protection of Property Act, 1875 (Great Britain), 446, 447, 458, 476, 508  
 Constitution of India, 125, 207, 215, 359, 360-363, 467, 471, 709, 710, 712  
 Consultative machinery, *see* Tripartite bodies  
 Contracts of Employment Act, 1963 (Great Britain), 293, 474, 481-482, 492, 506  
 Co-operative Societies Act, 1912, 636  
 C.P. and Berar Textile Labour Enquiry Committee, 426  
 Cotton Arbitration Act, 1800, 475  
 Court of Arbitration, 66, 277, 280-283  
 Court/Board of Inquiry, 278-279, 289, 290, 295, 478-480, 512-514, 516, 521, 526-527, 547, 550  
 Craft unions, 16, 17, 18, 30-31, 37-43, 44, 63, 163, 164, 166-167, 221, 222  
 Criminal conspiracy, 9, 10, 59, 93, 94, 207, 263, 439-443, 445, 447, 459  
 Criminal Law Amendment Act, 1871 (Great Britain), 446  
 Cunnison, J., 251n, 437n  
  
 Dange, S.A., 30, 96, 141, 203  
 Dankert, Clyde E., 4, 4n, 49n, 245n  
 Defence of India Rules, 105, 115, 282, 514-515  
 Democratic Party (U.S.A.), 189  
 Deposit Insurance Corporation, 520  
 Deshpande, S.V., 98  
 Desai, Morarji, 140  
 Directive Principles of the State Policy, 361-363  
 District Councils, 320, 321, 324, 325, *see also* Whitley Councils  
 Dock and Harbours Act, 1966 (Great Britain), 293, 506  
 Dock Workers' Advisory Committees, 147  
 Dock Workers' Regulation of Employment Act, 1948, 147  
 Donovan, Baro, 457, 482  
 Donovan Commission, *see* Royal Commission on Trade Unions and Employees' Associations  
 Dulles, Foster Rea, 185n  
 Dunlop, John T., 27, 27n, 29n  
 Dutt, R. Palme, 89n  
  
 Education (Scotland) Act, 1962, 493  
 Emergency Powers Act, 1920, 509  
 Emergency Powers (Continuance) Ordinance, 1946, 515  
 Employees' Family Pension Scheme, 1971, 627, 634, 643  
 Employees' Insurance Court, 602, 610, 622, 624, 625  
 Employees' Provident Funds Act, 1952, 362-363, 365, 557, 558, 627, 634-643  
 Employees' Provident Funds Ordinance, 1951, 627  
 Employees' Provident Funds Scheme, 627, 634-643  
 Employees' State Insurance Act, 1948, 124, 147, 148, 362, 365, 557, 558, 581, 585, 590, 591-625, 627, 694, 708  
     administration of, 618-624  
     and Workmen's Compensation Act, 612-613  
     benefits under, 583, 584, 590, 591, 592, 599-618, 620, 624, 625  
     contributions under, 591, 598-618, 621

- scope of, 591-593
- Employees' State Insurance Corporation**, 147, 520, 592, 596, 600, 601, 603, 609, 612, 614-624
- Employees' State Insurance Fund**, 621-622
- Employees' State Insurance (General) Regulations**, 1950, 596
- Employers and Workmen Act**, 1875 (Great Britain), 475-476
- Employers and Workmen (Disputes) Act**, 1860, 512
- Employers' Liability Act**, 1880 (Great Britain), 561, 564
- Employers' Liability Act**, 1938 (India), 564
- Employers' organisations/associations**, 127, 127n, 231, 292, 293, 322, 323, 331, 339, 439, 457, 473, 481-491, 499-503, 510, 511, 546, 550, 555, 619, 626, 672, 697
- Employment of Children Act**, 1938, 360, 365, 688, 707, 708
- Equal Pay Act**, 1970 (Great Britain), 293, 506
- Essential Services Maintenance Act**, 1968, 144, 262, 287, 339
- Essential Services Maintenance Ordinance**, 1968, 339
- Fabian Society**, 68, 357
- Factories Acts in Great Britain**, 356, 357, 360, 366-368, 369, 374, 376, 399, 402-405
- Factories Acts in India***
- Factories Act**, 1881, 89, 360, 367, 369, 399, 400, 401, 405
- Factories Act**, 1891, 367, 370, 400, 401
- Factories Act**, 1911, 367, 370-371, 400, 401
- Factories Act**, 1922, 367, 371-372, 400, 401
- Factories Act**, 1934, 367, 372-376, 400, 401
- Factories Act**, 1948, 124, 129, 362, 365, 367, 374n, 376-398, 400, 405, 419, 430, 580, 592, 593, 644, 681, 683, 686, 688, 690, 707, 708, 709, 733n
- and employment of women and young persons, 381-384, 389, 391, 393-396, 400, 401, 405
- and hours of work, 390-396, 400, 401, 405
- annual leave with wages under, 396-398
- health provisions of, 378-382, 405
- safety provisions of, 382-387, 401, 405
- welfare provisions of, 387-390, 405
- Factory Commission**, 1890, 370
- Factory Inspectors**, 376, 378, 380, 384, 387, 388, 390, 393, 395, 397, 417, 419-420, 422, 580
- Factory Labour Commission**, 1907, 370
- Factory Legislation**, 355, 356, 357, 367-405
- leading trends in, 399-405
- objectives of, 367-369
- FAO**, 676
- Fascists**, 32, 106, 108
- Fatal Accidents Act**, 1846 (Great Britain), 562, 564
- Fatal Accidents Act**, 1855 (India), 551, 564
- Fawcett Committee**, 96
- Feather-bedding**, 41
- First International**, 357
- Five Year Plans**, 114, 125, 127, 144, 148, 269, 300, 330, 334, 335
- Flanders, A.**, 75n, 329, 329n
- Food Corporation of India**, 725
- Foresight, G.**, 329, 329n
- French General Strike**, 1938, 246
- French Revolution**, 59
- Friendly Societies**, 16, 60, 64
- Friendly Societies Act**, 1896 (Great Britain), 66, 458
- Friendly Society of Carpenters and Joiners**, 60

- Friendly Society of Iron Founders, 65  
 Fundamental Rights, 125, 207  
 Gandhi, Indira, 711  
 Gandhi, Mahatma, 30, 107, 108, 270  
 Gandhi Sevak Sangh, 119  
 Gardner, Anthony H., 442n  
 Garrow, Sir William, 10  
 General Federation of Trade Unions, 658  
 General Strike, 1926 (Great Britain), 71, 72-74, 246, 453-454  
 General strikes, *see* Strikes, general  
 General unions, 19, 37, 38, 164, 165-166  
 Gherao, 249-251, 336  
 Girni Kamgar Union, 96, 165, 186  
 Giri Proposals, 101  
 Giri, V.V., 30, 100, 101, 285, 289  
 Gokhale, R.R., 100  
 Gomia, Explosives Plant, 187  
 Gompers, Samuel, 11, 14  
 Government of India Act, 1935, 98, 101-102  
 Grand, Daniel Le, 657  
 Grand National Consolidated Trades Union, 61, 63  
 Gratuity, 19, 283, 301, 412, 553, 595, 621, 626, 636, 638  
 Great depression, 98-100, 108, 425  
 Grievance procedure, 20, 226, 260, 271, 337  
 Guild socialism, 25  
 Guild socialists, 29, 42  
 Handloom Exports Corporation, 721  
 Harrison, Martin, 86n  
 Health and Morals of Apprentices Act, 1802, 368, 399, 402-405  
 Health insurance, 298, 552, 553, 555-557, 591  
 Heavy Engineering Corporation, 187  
 Heneman, Herbert G., 229n  
 Herberg, W., 172n  
 Hind Mazdoor Panchayat, 121  
 Hind Mazdoor Sabha (HMS), 23, 45, 120-124, 136-140, 175-177, 180, 181, 216, 224  
 Hindustan Mazdoor Sevak Sangh, 119  
 Hitler, 32, 107  
 Hogan, John D., 353, 354n  
 Hoxie, Robert F., 4n, 9n  
 Huberman, Leo, In. 10n  
 Hume, 198, 357, 440  
 Independent Labour Party (Great Britain), 23, 32, 67, 68, 70, 72, 74-76, 83-86, 182, 189, 325-326, 450, 455, 456, 458  
 Indian Airlines, 516, 520  
 Indian Aluminium Belur Works Employees' Union, 345  
 Indian Aluminium Company Ltd., 345  
 Indian Contract Act, 459  
 Indian Dock Labourers, Act, 1934, 709  
 Indian Federation of Labour, 106-109, 117, 121, 181, 181n  
 Indian Income Tax Act, 353, 416, 630  
 Indian Labour Conference, 117, 146, 213, 270, 297-299, 301, 307, 308, 330-331, 334, 335, 426, 435, 472, 473, 556, 627  
 Indian National Congress, 23, 95, 101-105, 107-108, 119-123, 124, 180, 186, 187  
 Indian National Defence Workers' Federation, 45, 187  
 Indian National Federation of Railwaymen, 186  
 Indian National Iron and Steel Workers' Federation, 167  
 Indian National Railway Workers' Federation, 340  
 Indian National Trade Union Congress (INTUC), 23-25, 45, 119-122, 136-140, 168, 170, 175-177, 180, 181, 187, 183, 216, 217, 288  
 Indian Penal Code, 250, 353, 420, 459, 523, 525, 527, 532, 535  
 Indian Pilots' Guild, 39

- Indian Railway Act, 1890, 417  
 Indian Railwaymen's Federation, 186  
 Indian Trade Disputes Act, 1929, 512-513  
 Indian Trade Disputes (Amendment) Act, 1932, 514  
 Indian Trade Unions Act, 1926, 91, 99, 127, 129, 135, 169, 170, 190-191, 203n, 204-205, 208, 360, 361, 365, 460-473, 549, 697, 708, 733n  
     assessment of, 33, 471-472  
     liabilities of registered trade unions under, 190-191, 204-205, 465-469  
     registration of trade unions under, 169, 207, 208, 212, 461-464, 549  
     rights of registered trade unions under, 93-94, 159, 464-465, 471  
 Indian Trade Unions (Amendment) Act, 1947, 118, 209-211, 225-227, 472-473  
 Indian Trade Unions (Amendment) Act, 1964, 468, 469n  
 Industrial Committee, 117, 136, 147, 168, 299-301, 307, 627, 675, 679-680  
 Industrial Conciliation and Arbitration Act (New Zealand), 277  
 Industrial Court, 280n, 290, 293, 458, 474, 478, 479, 481, 489, 507, 548, 549, 550  
 Industrial Courts Act, 1919 (Great Britain), 278, 290, 474, 477-480, 507, 512  
 Industrial democracy, 17, 19, 50, 62, 63, 218, 224, 285, 311-312, 346  
 Industrial disputes,  
     and compulsory establishment of bipartite committees, 267, 271-273  
     and compulsory investigation, 267, 271, 278-279, *see also* Court/Board of Inquiry  
     causes of, 115, 172, 235-239, 242-245, 266, 281, 300, 301  
     collective bargaining as a method of settling, *see* Collective bargaining  
     compulsory arbitration as a method of settling, *see* Compulsory arbitration  
     conciliation as a method of settling, *see* Conciliation  
     defined, 235-236, 266, 461, 518  
     extent of, in Great Britain, 72, 74, 82  
     extent of in India, 91, 94-95, 110-111, 116, 118, 123, 141-146, 156, 157, 172, 233, 287, 512, 548, 740-747  
     mediation as a method of settling, *see* Mediation  
     methods and machinery of settling, 102, 115-116, 233, 240, 242, 249, 250, 265, 266-308, 356, 365, 447, 474-550  
     settlement and prevention of, in Great Britain, 70, 262, 263, 289-294, 327, 424, 425, 446, 447, 474-511  
     settlement and prevention of, in India, 94, 102, 103, 115-116, 164, 169, 190, 207, 213, 262, 266-288, 294-308, 340, 417, 424, 425, 465, 466, 471, 473, 512-550, 627, 729  
     settlement of, in U.S.A., 262, 277-279  
     types and nature of, 47, 116, 235-239, 300, 301, 449, 454, 484, 496, 501, 512  
     voluntary arbitration as a method of settling, *see* Voluntary arbitration  
 Industrial Disputes Act, 1947, 21, 118, 123, 250, 288, 295, 365, 512, 515, 557  
     and change of conditions of service, 543-546  
     and lay-off and retrenchment, 516, 519-520, 529, 538-543, 545, 550, 557

- and machinery for the prevention and settlement of industrial disputes, 118, 144, 148, 204, 269-270, 273, 278, 282-283, 295-296, 299, 304, 306-307, 417, 515, 517, 521-535, 543-544, 547, 549, 725
- restrictions on strikes and lock-outs under, 144, 262, 276, 287, 536-538
- some important definitions under, 518-521
- statement of objects and reasons of, 273
- Industrial Disputes (Appellate Tribunal) Act, 1950, 516, 528, 529, 545
- Industrial Disputes (Amendment) Act, 1953, 516
- Industrial Disputes (Amendment) Act, 1954, 516, 557
- Industrial Disputes (Amendment) Act, 1976, 550
- Industrial Disputes (Amendment and Temporary Provisions) Act, 1951, 516
- Industrial Disputes (Banking and Insurance Companies) Ordinance, 1945, 122, 516
- Industrial Disputes Order, 1951 (Great Britain), 292, 480
- Industrial Disputes Tribunal (Great Britain), 292, 293, 294
- Industrial Employment Standing Orders Act, 1946, 542
- Industrial Finance Corporation, 520
- Industrial Policy Resolution 125-126, 329
- Industrial relations, 147, 165, 271, 273, 278, 284, 285, 286, 310, 355, 365, 482, 518, 547, 680, 696-697, 704
  - defined, 229-230
  - dominant aspects of, 74, 197, 232-239, 284, 309, 345-346
  - evolution of, 230-231
  - nature of, in Great Britain, 87, 289, 290, 331, 457, 458, 474, 477, 482-486, 495, 496, 498 504, 506, 507
  - nature of, in India, 141, 144, 146, 148, 172, 194, 197, 207, 208, 214, 216, 219, 287, 294-295, 297-299, 301-303, 307, 308, 337, 346
- Industrial Relations Act, 1971 (Great Britain), 21, 57-58, 87, 209, 246, 289, 290, 293-294, 457, 474, 482, 483-511
- Industrial Relations Commission(s) (India), 220-222, 303-307
- Industrial relations system, 117, 118, 227
- Industrial Training Act, 1964, (Great Britain), 293, 474, 481, 482, 506
- Industrial Training Institutes, 729
- Industrial Tribunals, 293, 300, 417, 482, 485, 487, 504, 506, 508, 515, 516, 528; *see also* Tribunals
- Industrial Truce Resolution, 123, 146, 270, 329
- Industrial unions, 19, 37, 38-44, 153, 163, 164-165, 221, 454, 455
- International Association for Labour Legislation, 658
- International Association of Machinists, 167
- International Brotherhood of Electrical Workers, 167
- International Centre for Advanced Technical and Vocational Training, 674, 675
- International Confederation of Free Trade Unions (ICFTU), 27, 45, 81, 124, 140
- International Institute of Labour Studies, 229, 229n, 675
- International Labour Organisation (I.L.O.)
  - activities of, 26, 358, 670-680, 713
  - and India, 93, 94, 121, 216, 677, 717
  - and international labour standards, 358, 371, 374, 665-670, 671, 677, 678, 680-710

- and Philadelphia Charter, 659-661  
 Constitution of, 92, 297, 658-665, 666, 668, 670, 704  
 Conventions and Recommendations of, 358, 371, 374, 663, 665-670, 671, 676, 679, 680-710  
 establishment of, 91-92, 358, 359, 371, 551, 657-658  
 Governing Body of, 297, 358, 662, 663-664, 665, 671  
 Industrial Committees *cf.* 679-680  
 influence of, on Indian labour legislation, 358-359, 371, 556-557, 677, 680-701, 706-710  
 International Labour Conference of, 92, 139, 297, 662-667, 671, 675, 676, 681, 685, 686, 687, 689, 692, 693, 695  
 International Labour Office of, 326, 556, 662, 663, 664-665, 672, 675, 676  
     membership of, 81, 661-662  
     principles of, 234, 658-661  
     regional activities of, 677-678  
 International Trade Union Secretariat, 27  
 International Wood Carvers' Association, 39  
 International Workingmen's Association, 64  
 Iron Ore Mines Labour Welfare Cess Act, 1961, 366, 644, 651-652
- Jallianwala Bagh, 90  
 Jamshedpur Labour Union, 39, 166  
*Janawani*, 96  
 Janni, A.J., 353, 354n  
 Job evaluation, 236, 318, 345  
 John, Michael, 203  
 Joint Industrial Councils, 320, 321-327, 477  
 Joint Management Councils, 144, 330-338, 346, 721n  
 Joint Production Committees (Great Britain, 326.
- Joshi, N.M., 30, 94, 185n, 460  
 Journeymen Steam Engine Makers, 60  
 Junta, 64, 65  
 Jurisdictional disputes, 39, 55, 75, 186, 236, 248-249, 496  
 Justices of Peace, 438, 475
- Kamgar Hitvardhak Sabha, 89  
 Kamraj, 140  
 Kanpur Trial, 97  
 Kanpur Labour Enquiry Committee, 426, 553  
*Karma, doctrine of*, 34, 718  
 Karnik, V.B., 89n, 96, 96n, 97n, 105n, 120n, 123n, 181n  
 Kerala Bonded Labour System (Abolition) Bill, 1972, 714
- Laccadive, Minicoy and Amindivi Islands (Debt Conciliation and Grant of Loans) Regulation, 1964, 714  
 Laccadive, Minicoy and Amindivi Islands Land Revenues and Tenancy Regulation, 1965, 714  
 Labour Appellate Tribunal, 516, 528, 529, 545  
 Labour Court, 211, 226, 280n, 282-283, 295-296, 306-307, 417, 472, 521-538, 548-550  
 Labour Day, 97  
 Labour Investigation Committee, 376, 426, 556  
 Labour legislation  
     and social legislation, 354-355, 362  
     classification of, 22, 184, 355, 357, 364-366, 691  
     defined, 354-355  
     forces influencing, 259, 355-364, 374, 674, 675  
     objectives of, 364, 366, 644  
     principles of, 351-366  
     protective, 22, 184, 355, 361, 364-365, 685  
     regulatory, 355, 364, 365

- social security, 356, 364, 365, 551-559, 564
- welfare, 364
- Labour management co-operation, and Joint Management Councils, *see* Joint Management Councils
- arguments for, 310-313
- collective bargaining and, 310, 311, 337-338, 345-348
- concept of, 232-233, 309-310, 311
- degrees and forms of, 311, 313 316-317, 696
- goals of, 309-313, 661
- handicaps in the growth of, in India, 336-338, 345-348
- in Great Britain, 319-329, 330, 348
- in India, 329-348, 390
- management's decision-making process and, 309-318, 321
- under 20-point programme, 711, 721-728
- Labour-Management Relations Act, 1947 (U.S.A.), *see* Taft-Hartley Act, 1947
- Labour Relations Bill, 123
- Labour Representation Committee, 69, 83
- Labour Representation League, 67
- Labour Welfare Boards, 302, 648-656
- Labour Welfare Fund Acts (States), 148, 644-645, 652-656
- Laissez faire* 6, 356
- Landis, Dean, 440
- Law Reform (Contributory Negligence) Act, 1945, (Great Britain), 561
- Law Reform (Miscellaneous Provisions) Act, 1934, 562
- Lay-off, 236, 237, 313, 318, 396, 482, 516, 519, 538-543, 550, 557, 585
- League against Imperialism, 97
- League of Nations, 371, 658
- Lester, Richard A., 27n
- Lewis, John L., 203
- Liberal Party (Great Britain), 67, 75
- Life Insurance Corporation Act, 1956, 416
- Life Insurance Corporation, 416, 520
- Lock-outs, 20-22, 231, 233, 239, 240, 243, 251, 266, 268, 269, 271, 273, 275, 286, 294, 303
- defined, 518
- extent of, in Great Britain, 65 67, 291, 292, 443, 501
- extent of, in India, 94-95, 103, 110-111, 115, 284, 294, 296, 518
- legality of, 116, 454, 513, 514, 528, 537-538, 542, 546, 595
- restrictions on, 116, 276, 279-283, 291-292, 295, 305, 454, 474, 480, 488, 503, 509-510, 513, 515, 522, 524, 525, 530-532, 536-538, 549, 550
- Lokhanday, N.M., 89
- Loknathan, 93
- London Dock Strike, 1889, 67
- London Shipwrights Association, 60
- London Trades Council, 64, 65
- Luddite movement, 60, 60n
- Mac Donald, Ramsay, 74, 75
- Madhya Pradesh Industrial Relations Act, 1960, 295, 296, 547, 549-550
- Madras Debt Bondage Abolition Regulation, 1940, 710
- Madras Labour Union, 10, 17, 91, 94, 460,
- Maintenance of Membership shop agreement, 31, 52, 53
- Malviya, R.K., 220n
- Manchester Trades Council, 66
- Marking of Heavy Packages Act, 1951, 709
- Marshall Plan, 124
- Martial Law, 90
- Marx, Karl, 9n, 64, 198, 357,
- Maternity Benefit Act, 1961 (Central), 365, 552, 558, 582-590, 591, 603, 617
- Maternity Benefit Acts (States) 552, 556, 558, 582-584, 590, 591, 603, 617
- Maternity bonus 584, 586, 588

- Mayo, Elton, 326  
 Meany, George, 203  
 Mediation, 242, 267, 268, 271, 274-275, 475  
 Medical Appeal Tribunal, 602, 610, 624  
 Medical Benefit Council, 147, 619-621, 623-624  
 Meerut Trial, 97, 99  
 Mehta, Jamna Das, 106  
 Merchant Shipping Act, 1958, 708  
 Merritt, Walter Gordon, 14, 14n  
 Mica Mines Labour Welfare Advisory Committee, 147  
 Mica Mines Labour Welfare Fund Act, 1946, 147, 366, 644, 649-651  
 Millis, Harris A., 8n, 10, 10n, 40n, 173n, 243n  
 Mines Act, 1923, 360  
 Mines Act, 1952, 362, 365, 580, 681, 683, 688, 690, 707, 708, 709  
 Mines Maternity Benefit Act, 1941, 552, 583-584  
 Minimum wage legislation, 243, 435, 711,  
     objectives of, 423-426  
 Minimum Wages Act, 1948, 124, 147, 148, 362, 365, 424, 426-436, 485, 709, 720  
     appraisal of, 434-436, 720  
 Molestation Act, 1857 (Great Britain), 441  
 Montgomery, Royal E., 8n, 10, 10n, 40n, 173n, 243n  
 Motor Transport Workers Act, 1961, 707, 708, 709  
 Munition of War Acts (Great Britain), 291, 480  
 Mussolini, 32  
 Mysore Labour Welfare Fund Act, 1965, 645, 654-655
- Napoleonic Wars, 657  
 Nanda, Gulzarilal, 119, 120  
 National and Local Government Officers Association (Great Britain) 80  
 National Arbitration Board, 270  
 National Arbitration Promotion Board, 303  
 National Arbitration Tribunal (Great Britain), 291, 292, 480  
 National Association for the Protection of Labour, 61  
 National Association of Locomotive Drivers and Firemen (Great Britain), 167  
 National Coal Development Corporation (NCDC), 631, 633  
 National Commission on Labour  
     on check-off, 161  
     on closed-shop, 58  
     on collective bargaining, 161, 168, 302-303, 305  
     on compulsory arbitration, 302-307  
     on conciliation, 303-307  
     on criteria to determine representative character of trade unions, 217-218  
     on *gherao*, 250-251  
     on industrial federations, 161, 168  
     on labour-management co-operation, 336-338  
     on methods/'machinery' of settling industrial disputes, 270, 302-308, 473  
     on minority unions, 227-228  
     on political affiliation of trade unions, 182, 186-187  
     on recognition of trade unions, 210, 215-218, 220-222, 225-228, 302  
     on trade union finance, 159, 161  
     on trade union leadership, 204-205  
     on trade union rivalry, 186-187  
 National Council of Labour, 85  
 National Disputes Tribunal (Great Britain), 480-481  
 National Federation of Indian Railwaymen, 43  
 National Federation of Labour, 100-101  
 National Industrial Arbitration Board (Great Britain), 290, 293, 505, 507

- National Industrial Recovery Act, 1933 (NIRA), 32, 425
- National Industrial Relations Court (Great Britain), 209, 262, 293-294, 458, 485-511
- National Institute of Labour, 717
- National Joint Advisory Committee (Great Britain), 326
- National Labour Relations Act, 1935 (U.S.A.), *see* Wagner Act, 1935
- National Organisation of Labour, 140
- National Productivity Council, 301
- National Society of Brass and Metal Mechanics (Great Britain), 167
- National Trades Union Federation, 100-101
- National Tribunals, 282-283, 295, 296, 304, 521, 523, 525, 526, 529-538
- National Union of Blast-furnacemen (Great Britain), 167
- National Union of Seamen (Great Britain), 82
- National Union of Teachers (Great Britain), 80
- Navy (Discipline) Act, 1934, 519
- Nazi, 32
- Need-based Minimum Wage, 339
- New Model Unions, 40, 63-65, 68, 88
- New Unions, 67-69
- Nijalingappa, 140
- Nine-hour movement, 64
- Northumberland and Durham Colliers' Union, 60
- Oastler, Richard, 368n
- Open shop, 53
- Operative Bricklayers, 65
- Ordinance of Labourers, 1349, (Great Britain), 437
- Orissa Debt Bondage Abolition Regulation, 1948, 713
- Orissa Debt Bondage Abolition Rules, 1963, 713
- Osborne Judgement, 70-71, 449-450
- Osborne, W.V., 70
- Owen, Robert, 61, 62, 63, 198, 368n, 657
- Pan Pacific Trade Union Secretariat, 97
- Patel, Vallabhbhai, 119
- Payment of Bonus Act, 1965, 115
- Payment of Bonus (Amendment) Act, 1976, 115
- Payment of Wages Act, 1936, 160, 360, 365, 398, 409, 423, 655, 709
- Payment of wages legislation, 160, 355 objectives of, 407-410
- Pay Revision Committees, 119
- Peel, Robert, 368n
- Pelling, Henry, 75n
- Pelloutier, 198
- People's Charter, 62
- Perlman, Selig, 9n, 13, 13n
- Philadelphia Cordwainers Case*, 10
- Picketing, 21, 26, 70, 248, 251, 255, 439, 447, 454, 508
- Pillai, 203
- Pit Production Committee, 326
- Place, David, 357, 440
- Plantation Labour Act, 1951, 363, 365, 552, 583, 584, 688
- Platform of Unity, 100
- Police Act, 1919 (Great Britain), 453
- Police Federation (Great Britain), 453
- Potter, George, 66
- Praja Socialist Party, 180
- Prasad, Rajendra, 104
- Proudhon, 198
- Production Committees, 326, 329, 330
- Provident Fund Act, 1925, 416, 626
- Provident Fund (Schemes), 298-299, 412, 416, 528, 545, 553, 557, 595, 621, 626-643, 725
- Public Utility Services, 260, 276, 287, 296, 397, 513-516, 520-524, 525, 535, 536-538, 549
- Punjab Labour Welfare Fund Act, 1965, 645, (55-656
- Quinn V. Lethan*, 447
- Quit India Movement, 107, 111
- Race Relations Act, 1968 (Great Britain), 510
- Racketeering, 50, 192
- Radical Democratic Party, 108, 180
- Rai, Lala Lajpat, 92
- Ramanujam, G., 203

- Rao, R., 556-557  
 Rashtriya Mill Mazdoor Sangh, 123, 165, 186  
 ReJ Trade Union Congress, 99-101  
 Redundancy Payments Act, 1965 (Great Britain), 293, 474, 481, 482, 493, 506  
 Reform D.V., 556  
 Reform Act, 62, 63  
 Rege Committee, *see* Labour Investigation Committee  
 Rege, D.V., 556  
 Registrar of Friendly Societies (Great Britain), 16, 66, 444, 445, 451, 452, 456  
 Registrar of Trade Unions (India), 212, 461, 463, 468, 470, 471  
 Restraint of trade, 9, 18, 65, 93, 263, 439, 442, 443, 446, 448, 449, 459, 465  
 Retrenchment, 99, 235-237, 270, 311, 318, 516, 518-520, 529, 538, 543, 545, 550, 557, 632, 642  
 Reuther, Walter, 203  
 Revenue Recovery Act, 1890, 579  
 Rezler, Julius, 27, 27n  
 Richardson, Henry, 82n, 158n  
 Roberts, B.C., 49n, 65, 66n  
 Rohtas Industries, 213n, 269  
 Rohtas Workers' Union, 166, 269  
*Rooks v. Barnard*, 457  
 Roosevelt, 32, 273  
 Round Table Conference, 97  
 Rowlett Act, 90  
 Royal Commission of Labour, 1867 (Great Britain), 66, 442  
 Royal Commission on Labour, 189 (Great Britain), 447, 476  
 Royal Commission on Labour, 1903 (Great Britain), 448  
 Royal Commission on Labour, 1929, (India), 97, 361, 372, 409, 425-426, 514, 552-553  
 Royal Commission on Trade Unions and Employers' Associations, 87n, 290, 457-458, 482-483, 506  
 Roy, M.N., 106, 108, 180, 181  
 Ruikar, R.S., 104  
 Russian Revolution, 96, 361  
 Sadler, Thomas, 368n  
 Sagri System Abolition Act, 1961, 710  
 Samuel, Harry, 439n  
 Samuel, Sir Herbert, 73  
 Sanjukta Socialist Party, 180  
 Sarabhai, Ansuyaben, 91  
 Second International, 357  
 Seldes, George, 11  
 Selective Employment Payments Act, 1966 (Great Britain), 293, 506  
 Sen, K.C., 122  
 Shaftesbury, 357  
 Sheffield Association of Organised Trades, 65  
 Shister, Joseph, 27, 27n, 172n  
 Shonfield, Andrew, 457, 483  
 Shops and Establishments Acts, 365, 709  
 Shop Steward Movement, 72, 320  
 Shop Stewards, 483  
 Simon Commission, 97, 101, 102  
 Sinha, P.R.N., 224n, 301n  
 Social Democratic Federation, 68  
 Socialist, 96  
 Social insurance, 552, 556, 557, 591  
 Social legislation  
     and labour legislation, 354-355, 362  
     defined, 351, 353-355  
     forces influencing, 355-364  
     objectives of, 364  
     principles of, 351-366  
     rise of modern, 352-354, 357  
     scope of, 351, 353-355  
 Social security, 356, 363, 556-559, 661, 671, 672, 677, 680, 693-696, 699, 700  
 Social security legislation, *see* Labour legislation  
 Societies (Miscellaneous Provisions) Act, 1940 (Great Britain), 456  
 Societies Registration Act, 1860, 464

- Sorel, 198
- Stack, M., 556, 557
- Standing Labour Committee, 117, 146, 297-299, 301, 307-308, 376, 426, 473, 626, 627
- Standing orders, 201, 235, 237, 238, 281, 333, 396, 528, 529, 542, 543, 545, 548
- State Implementation and Evaluation Committees, 302
- State Labour Advisory Boards, 117, 146, 212-213, 297, 301
- State Minimum Wage Advisory Boards, 148, 429, 434-435
- State regulation of wages, objectives of, 423-426
- State Trading Corporation, 725
- Statute of Apprentices, 1562 (Great Britain), 438, 439, 475
- Statute of Labourers, 1351 (Great Britain), 437, 475
- Steam Engine Makers' Society, 60
- Strafford Trades Council, 66
- Strikes, 20, 25-26, 49, 60, 62, 70, 105, 144, 172, 194, 195, 200, 227-228, 240, 242, 253, 261, 266, 268, 273, 279, 294, 303, 445, 448
- authorised and unauthorised, 245-246
  - bundhs, 246, 249
  - causes of, 95, 113, 115, 118, 140, 194, 195, 208, 239-245, 259
  - costs of, to employers, 70, 239, 254-255, 257-258, 306
  - costs of, to workers, 17, 26, 27, 64, 65, 67, 69-70, 195, 239, 242, 254, 257-260, 306, 445-448, 454, 503
  - defined, 241, 518
  - effects of, 35, 195, 239, 253, 256-263, 271
  - elimination and control of, 115, 116, 231, 240, 241, 261, 262, 294, 305
  - extent of, in Great Britain, 61, 69-70, 72-74, 233, 243, 246, 262, 291, 292, 443, 445, 447-448, 453, 476
  - extent of, in India, 88-90, 94-100, 103-105, 108, 113, 118, 123, 141-146, 157, 208, 233, 243, 248-249, 252-253, 262, 518, 740-747
  - extent of, in U.S.A., 243, 245-246, 278
  - factors conditioning the outcome of, 35, 51, 55, 96, 103, 118, 183-184, 188, 194-195, 252-256
  - forms of, 245-251
  - general, 24, 25, 195-196, 245, 246, 248, 249, 339, 453-454, 513
  - gherao, 249-251, 336
  - jurisdictional, 248-249
  - legality of, 15, 73, 110, 144, 281, 291, 292, 439, 454, 513, 514, 528, 537-538, 542, 545, 595, 633, 634
  - mandays lost through, 94-95, 100, 103, 111, 118, 123, 141-146, 287, 740-747
  - ordinary, 248
  - particular, 246
  - political, 248, 249, 454, 513
  - quickie, 247
  - restrictions on, 87, 93, 104, 110-111, 115-116, 144, 262-265, 275, 276, 278, 281-283, 292, 296, 305, 339, 447-448, 453, 454, 474, 480, 486, 488, 503-504, 509-510, 513, 515, 522, 524, 525, 530-532, 535-536, 549, 550
  - results of, 252-253, 269
  - right to, 21-22, 87, 103, 104, 110-111, 115-116, 144, 262-265, 268, 275, 284, 286, 294-296, 303, 439, 460, 508
  - sit-down/stay-in, 245, 247, 414
  - slow down, 245-247
  - sympathetic, 74, 245, 248, 454, 456
  - wild-cat, 245-246, 482
  - workers involved in, 94, 103, 111, 118, 123, 141-146, 257, 287, 501, 740-747

- work-to-rule, 247-248
- Swedish International Agency, 717
- Taff-vale Judgement*, 69-70, 447-448
- Taft-Hartley Act, 1947 (U.S.A.), 19, 21, 56, 58, 248, 262, 274, 278-279
- Tannenbaum, Frank, 8n
- Tata Workers' Union, 341-345
- Taylor, George W., 22, 22n, 53n
- Tea Act, 1953, 654
- Tea Board, 654
- Tea District Emigrant Labour Act, 1832 (Great Britain), 360
- Terms and Conditions of Employment Act, 1959 (Great Britain), 289, 293, 474, 481, 507, 510
- Terms and Conditions of Employment Act, 1963 (Great Britain), 492
- Textile Commission, 370
- Textile Labour Association, 17, 41, 91, 100, 140, 166, 269
- Tiark, B.G., 89
- Tillyard, Frank, 447n
- TISCO, 341, 344
- Trade Boards, 435, 477
- Trade Boards Act, 1909 (Great Britain), 424
- Trade Disputes, *see* Industrial Disputes
- Trade Disputes Act, 1906 (Great Britain), 70, 448-451, 457, 458
- Trade Disputes Act, 1965 (Great Britain), 457-458
- Trade Disputes and Trade Unions Act, 1927 (Great Britain), 71, 74, 292, 453-456, 512
- Trade Disputes and Trade Unions Act, 1946 (Great Britain), 456
- Trade Disputes (Amendment) Act, 1938 (India), 514
- Trade Disputes (Extending) Act, 1934 (India), 514
- Trades Union Congress (British), 23, 43, 45, 65-68, 70, 72, 77, 80-86, 92, 123-124, 182, 189, 291, 292, 326, 450, 486
- Trade Union Act, 1871 (Great Britain), 442-447, 449-451, 458, 476, 500
- Trade Union Act, 1913 (Great Britain), 71, 450-451, 455, 458
- Trade Union Act Amendment Act, 1876 (Great Britain), 446-447, 449-452, 458, 476
- Trade Union (Amalgamation) Act, 1917, 453
- Trade Unions
- activities of, 3, 4, 12, 15, 17, 26-27, 46-51, 54, 56, 70-71, 89, 90, 105, 123, 126, 169, 185, 188, 193-194, 203, 205, 230, 314-316, 409, 439, 441, 448-453, 455, 459, 460, 476, 482, 483, 486, 493, 535
  - collective bargaining and, *see* Collective bargaining
  - common law and, 10, 59, 65, 93-94, 439-442, 446, 459, 460
  - craft, *see* craft unions
  - defined, 2-4, 442, 446, 450, 451, 461, 499
  - determinants of the rate of growth of, 27-36, 131, 250
  - federations, 41, 44-46, 134-141, 231
  - finances of, 16, 45, 50, 51, 54, 242, 253, 443-446, 454-455
  - general, *see* General unions
  - government of, 45-51, 87, 169-177, 465
  - handicaps of, early, 8-11, 17, 22, 23, 51, 59-60, 93, 356, 437-441, 459-460, *see also* Breach of contract; Criminal conspiracy; Restraint of trade
  - industrial, *see* Industrial unions
  - jurisdictional disputes and, *see* Jurisdictional disputes
  - labour-management co-operation and, 311-319, 322-323, 330-331, 334, 336-338, 341-348
  - leadership of, 28, 30, 50, 54, 56, 57, 60, 83, 245-246, 253, 254, 288

- methods of, 4, 9, 12, 15-25, 47, 251, 437, 439-441, 454
- mutual insurance as a method of, 15-17, 22
- objectives of, 4, 9, 11-15, 46-48, 66, 311, 314-316, 437, 439, 443-446, 462, 465-467, 499, 551
- origin and growth of, 3-9, 11, 27-36, 51, 88, 99-101, 229, 253, 313, 356, 439, 440
- political action as a method of, 13-17, 22-25, 44, 67, 70-73, 74, 98, 102, 106, 108, 109, 177, 178, 206, 246, 254, 325, 446, 449-452, 454-455
- structure of, 3, 4, 12, 28, 30-31, 37-45, 149, 153, 162-169, 246, 261
- (*see also* Trade unions in France; Trade unions in Great Britain; Trade unions in India; Trade unions in U.S.A.)
- Trade Unions (Amalgamation) Act, 1964 (Great Britain), 456-457, 458, 500
- Trade Unions and Labour Relations, Act, 1974 (Great Britain), 478, 511
- Trade Unions Bill, 1950 (India), 123, 473
- Trade unions in France, 198
- Trade unions in Great Britain
  - Code of Industrial Relations Practice and, 483
  - during early years, 4-11, 59-60, 86, 93, 251, 263, 437-441, 459
  - during 1830-1849, 61-63
  - during 1850-1879, 63-67, 88, 441-447
  - during 1880-1899, 67-69, 447
  - during early 20th century, 69-71, 447-450
  - during First World War, 71-72, 450-453
  - during inter-War period, 72-76, 99, 453-456
  - during Second World War, 76, 291
  - federations of, 65, 74-77, 81, 499, 502
  - finances of, 66, 70-71, 158, 182, 443-450, 452, 454-455, 486-492, 502, 503, 510
  - legal recognition of, 67, 69, 442, 445, 449, 474, 476, 511
  - leadership of, 62, 64, 66, 83, 86, 203, 290, 320, 328, 445, 446
  - membership of, 69, 72, 75, 77-81, 84, 87, 182, 447, 452-456, 482, 483, 486-492, 500-501, 507
  - political fund of, 446, 449-452, 454-456
  - political programme of, 67-71, 74-77, 80-81, 83-86, 325, 446, 449-452, 454-456
  - present position of, 77-87, 454-458, 483-511
  - recognition of, 325, 437, 484, 487, 496-498
  - registration of, 293, 444-447, 484, 499-503
  - rights and liabilities of registered, 443-451, 454, 482-483, 500-503, 511
  - size of, 77-80, 153
- Trade unions in India
  - central federations (national centres) of, 23, 93, 99-101, 107, 108, 117, 119-124, 126, 135, 136-141, 162-163, 167-170, 174-192, 214, 216, 298, 307, 331, 337
  - during early years, 88-90, 459
  - during First World War, 90-91, 459, 551
  - during 1920-1929, 91-98
  - during 1930-1939, 98-105
  - during 1940-1949, 33, 105-124, 289
  - during 1950's and onwards, 125-149, 288, 289, 330, 331, 334, 336-348, 361, 429, 619
  - extent of, in different industries, 89, 91-93, 122-123, 127-131
  - extent of, in different States, 131-134, 145

- factionalism in, 186, 187-189
- federations of, 41, 43-45, 134-136, 167-169, 174-175, 214, 216, 221, 222, 224, 340, 461, 546
- finances of, 17, 89, 110, 134-135, 149, 154-161, 173, 193, 198, 201, 213, 215-216, 226, 227, 256, 288n, 462, 463, 465-467, 469, 471
- government of, 45-51, 149, 169-177, 206-207, 546
- legal recognition of, 460, 471
- leadership of, 92, 94-101, 106, 149, 157, 159-161, 171-174, 178-206, 217, 218, 288-289, 336, 337, 346, 361, 417, 420, 431, 460, 544, 549, 721
- liabilities of, registered, 465-469
- majority, 221, 222, 225-228
- membership of, 89, 91-93, 96, 99, 102, 107, 109-110, 122, 127-141, 150-155, 160-177, 211-221, 236, 307, 347, 459, 461, 462, 465-467, 730-793, 746-747
- minority, 212, 215, 216, 225-228
- multiplicity of, 162, 172, 186-187, 193, 207-228, 346, 472
- outsiders in, 157, 164, 170, 175, 190-206
- political fund of, 466-467, 471
- recognition of, 118, 121, 123, 149, 161, 171, 207-228, 235-238, 243, 248-249, 260, 270, 303, 306, 337, 340, 472, 548, 550, 619, 722, 727
- registration of, 203, 332, 460-464, 473, 721
- representative character of, 118, 210-211, 213-221, 225-228, 305, 332, 346, 548
- rights of registered, 464-465, 466, 468, 471, 521, 546, 549, 722, 727
- rivalry in, 97-101, 105-109, 119-124, 149, 154, 161-162, 168-169, 171-174, 184, 188, 193, 207-228, 236, 248-249, 254, 285, 332, 346
- size of, 33, 134, 136, 149, 150-155, 201, 256
- structure of, 149, 153, 162-169, 221-225
- welfare activities of, 92, 156, 157, 159
- Trade Unions in U.S.A.
  - closed shop and, 56, 58
  - collective bargaining and, 18-22, 25, 32, 116
  - democracy in, 172-173
  - determinants of the rate of growth of, 27-28, 32
  - during depression, 99
  - government of, 49, 51
  - jurisdictional strikes and, 248-249
  - maintenance of membership shop and, 53
  - methods of, 17, 251
  - objectives of, 11-15
  - outsiders in, 203
  - political programme of, 22-24, 28, 32, 189
  - settlement of industrial disputes and, 238-239
  - size of, 153
  - structure of, 39, 40, 43, 45
  - suppression of, 9-10, 93
- Trade Union Unity Committee, 100
- Tramp benefit, 16
- Transfer of Property Act, 353
- Transport Act, 1947 (Great Britain), 328
- Transport and General Workers' Union (Great Britain), 39
- Treaty of Versailles, 371, 657
- Tribunals, 122, 190, 193, 280-283, 288, 293, 295-296, 300, 340, 417, 478, 481, 484, 501, 515-517, 521, 523, 525-538, 549, 622  
(see also Industrial Tribunals)
- Tripartite bodies, 21, 106, 116-117, 136, 146-149, 295, 297-302, 307-308, 334, 335
- Triple Alliance, 72
- Truck Acts (Great Britain), 409

- Turnbull, John G., 229n  
 Twenty-point Programme, 436, 711-729
- Unemployment insurance, 553, 556, 557
- UNESCO, 676
- Unfair industrial practices, 289, 458, 484-490, 493-495, 497, 501-505, 508  
*(see also* Unfair labour practices)
- Unfair labour practices, 19, 20, 204, 236, 275, 306, 472, 473 *(see also* Unfair industrial practices)
- UNICEF, 676
- Union shop agreement, 31, 52-53, 55-58
- Unit Production Committees, 329, 330
- United Brotherhood of Carpenters and Joiners of America, 167
- United Kingdom Alliance of Organised Trades, 65
- United Nations, 658, 661, 670, 672
- United Trades Union Congress (UTUC), 25, 45, 120-124, 136-140, 180, 181, 216
- U.P. Chini Mazdoor Federation, 169
- U.P. Industrial Disputes Act, 1947, 295, 296, 547, 549
- U.P. Labour Enquiry Committee, 104
- U.P. Labour Welfare Fund Act, 1965, 653
- U.P. Maternity Welfare Act, 1939, 104
- U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950, 644, 652-653
- Vagrancy Act (Great Britain), 475
- Vasavada, S.R., 203, 220n
- Vester, Horatio, 442n
- Voluntary arbitration  
   as a method of settling industrial disputes, 266-267, 269-271, 279-281, 303, 696  
   defined, 269  
   in Great Britain, 271, 289, 290, 474-480, 485, 494  
   in India, 270, 303, 305, 516, 531-538, 548  
   in U.S.A., 238, 271
- Wadia, B.P., 10, 91, 94
- Wage Boards, 136, 147, 168, 169, 224, 237, 238, 242, 243, 281, 297, 300-301, 426, 548, 633-634
- Wagner Act, 1935, 32, 208-209, 273-274
- Wages Councils, 77, 424
- Wage Stabilisation Board (U.S.A.), 424-425
- Webb, Beatrice, 3, 4n, 15, 61, 61n, 64, 198
- Webb, Sidney, 3, 4n, 15, 61, 61n, 64, 198
- Whitley Committee, 320, 342, 325, 477-478
- Whitley Councils, 72, 320-325, 328, 338
- Whitley, J.H., 477
- WHO, 676
- Witle, Edwin E., 354n
- Wolverhampton Trades Council, 65
- Workers' education, 17, 204, 206, 672, 674, 676, 677
- Workers' participation in industry, *see* Labour-management cooperation
- Workers' participation in management, *see* Labour-management cooperation
- Workmen's Breach of Contract Act, 1859, 360
- Workmen's compensation, 22, 327, 355, 356, 552, 557, 693-694  
   and damages under Common Law, 559-564  
   in Great Britain, 327, 552, 559-562, 563  
   in India, 360, 365, 556, 558, 562-581, 591, 598, 603, 606, 608, 612-613, 617, 729, 748-753
- Workmen's Compensation Act, 1897

- (Great Britain), 552  
 Workmen's Compensation Act, 1906  
 (Great Britain), 563  
 Workmen's Compensation Act, 1923  
 (India), 360, 365, 552, 556, 558  
 562, 563, 564-581, 591, 603, 606  
 608, 612-613, 617, 694, 708, 748-753  
 Workers' association in industry, *see*  
 Labour-management cooperation  
 Workmen's Compensation Commis-  
 sioner, 417, 430, 571, 574-580  
 Works Committee(s), 148, 226, 273,  
 295-296, 320, 324, 330, 332, 337,  
 397, 477, 515, 517, 521-522, 725, 728  
 World Federation of Trade Unions  
 (WFTU), 27, 45, 123-124, 140  
 Yellow-dog contract, 52  
 Yoder, Dale, 229

